COMMITTEE ON HOUSING

ROBERT C. WHITE, JR., CHAIR
COUNCIL OF THE DISTRICT OF COLUMBIA

MEMORANDUM

TO: Nyasha Smith, Secretary to the Council
FROM: Councilmember Robert C. White, Jr., Chair, Committee on Housing
DATE: June 4, 2023
RE: Record of Hearing on B25-0045, B25-0074, and B25-0113

Attached is the record for the public hearing that the Committee on Housing held on May 18th, 2023, on B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023", B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023", and B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023". Attached are copies of the notice, witness list, and all written testimony received.

ATTACHMENTS

1. Notice of Public Hearing
2. Witness list
3. Written testimony

ATTACHMENT 1

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING
ROBERT C. WHITE, JR., CHAIR

NOTICE OF PUBLIC HEARING

on

B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023"

B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"

and

B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

Thursday, May 18th 2023
10:00 AM

Live via:
Zoom Video Conference
Broadcast on DC Council Channel 13
Streamed live at www.dccouncil.gov, www.entertainment.dc.gov, and
https://www.youtube.com/channel/UCPJZbHhKFbnyGeQclJxQkog/live

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On Thursday, May 18th, 2023, at 10:00 AM, Councilmember Robert C. White Jr., Chair of the Committee on Housing, will hold a public hearing on the B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023", B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023", and B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023". The public hearing will take place via the Zoom web conferencing platform at 10:00 AM. Members of the public will be able to view the public hearing at www.dccouncil.gov, www.entertainment.dc.gov, and at https://www.youtube.com/channel/UCPJZbHhKFbnyGeQclJxQk0g/live.

The stated purpose of B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023" is to prohibit condominium instruments from interfering with the operation of child development facilities.

The stated purpose of B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023" is to amend the Rental Housing Act of 1985 to limit the amount of fees that a housing provider may charge a prospective tenant associated with processing an application for rental housing and to increase the notice period for rent increases from 30 days to 60 days.

Finally, the stated purpose of B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023" is to amend the Rental Housing Conversion and Sale Act of 1980 to permit registered community land trusts to purchase housing accommodations, subject to the provisions of the Tenant Opportunity to Purchase Act; to amend Title 47 of the District of Columbia Official Code to grant community land trusts secondary priority to purchase properties at a tax sale; and to establish a Homeowner Resource Center within the Department of Housing and Community Development to provide resources for homeowners and prospective homeowners in the District of Columbia.

The Committee invites the public to testify remotely or to submit written testimony. Anyone wishing to testify must sign up at must sign up at bit.ly/coh_signup or by phone at (202) 727-8270, and provide their name, phone number or e-mail, organizational affiliation, title (if any), and personal pronouns by **the close of business on Tuesday, May 16th, 2023**. Witnesses are encouraged, but not required, to submit their testimony in writing electronically in advance to housing@dccouncil.gov. Witnesses will participate remotely via Zoom. The Committee will follow-up with witnesses with additional instructions on how to provide testimony in advance of the proceeding.

All public witnesses will be allowed a maximum of four minutes to testify, while Advisory Neighborhood Commissioners will be permitted five minutes to testify. At the discretion of the Chair, the length of time provided for oral testimony may be reduced.

Witnesses who anticipate needing language interpretation, or require sign language interpretation, are requested to inform the Committee of the need as soon as possible but no later than five (5) business days before the proceeding. We will make every effort to fulfill timely requests, however requests received in less than five (5) business days may not be fulfilled and alternatives may be offered.

The Committee also encourages the public to submit written testimony to be included for the public record. Copies of written testimony should be submitted by e-mail to housing@dccouncil.gov. **The record for this public hearing will close at the close of business on Thursday, June 1st, 2023.**

ATTACHMENT 2

COMMITTEE ON HOUSING

ROBERT C. WHITE, JR., CHAIR
COUNCIL OF THE DISTRICT OF COLUMBIA

Public Hearing

on

B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023"

B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"

B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

Thursday, May 18th, 2023
10:00 AM

I. Call to Order

II. Opening Remarks

III. Witness Testimony

A. Public Witnesses

1. Maria Miranda, Family Child Care Owner
2. Cynthia Davis, Executive Director, *DC Family Child Care Association*
3. Rachelle Ellison, Senior Mentor Advisor / Lead of Rhonda Whitaker Streets to Life DC, *People for Fairness Coalition*
4. Robert Warren, Director, *People for Fairness Coalition*
5. Nikila Smith, Co-lead, *Rhonda Whitaker Streets for Life DC*
6. Kirsten Williams, *DC Robinhood*
7. Francwa Sims, Public Witness

8. Victoria Gray, Public Witness

9. Patrice Ali, Member, *Fair Budget Coalition*

10. Samantha Fallon, Public Witness

11. Luther Lacy, Community Advocate, *CNHED Community Voices Working Group and People for Fairness Coalition*

12. Craig London, Board Member, *DC Housing Provider's Association*

13. Antonio Wingfield, Public Witness

14. Amy Klein, President, *DC Land Title Association*

15. Penda Byrd, Public Witness

16. Teresa Aspinwall, Director, *The Multicultural Spanish Speaking Providers Association*

17. Marta Beresin, Public Witness

18. Mel Zahnd, Supervising Attorney, *Legal Aid of the District of Columbia*

19. Ginger Rumph, Executive Director, *Douglass Community Land Trust*

20. Leigh Higgins, Senior Attorney, *D.C. Tenants' Rights Center*

21. Travis Ballie, Acting President, *1610-1624 Easement Areas Association*

22. Tony Mancuso, 2023 Board President, *DC Association of Realtors*

23. Brit Ruffin, Director of Policy and Advocacy, *The Washington Legal Clinic for the Homeless*

24. Coy McKinney, *SW Action*

25. Curtis Alston, Housing Case Manager, *Metropolitan Educational Solutions*

26. Keon Nichols, Public Witness

27. Vaughn Perry, President, *Douglass Community Land Trust*

28. Faruq Hussein-Bey, Member, *Douglass Community Land Trust*

29. Silvia Salazar, *Douglass Community Land Trust*

30. Sheldon Clark, Member, *Douglass Community Land Trust*

31. Victoria Perez, Engagement and Sustainability VISTA, *Douglass Community Land Trust*

32. Luwam Kebade, Member, *Douglass Community Land Trust*

33. Katalin Peter, Vice President, *AOBA*

34. Reginald Black, Housing Liaison, *Ward 6 Mutual Aid*

35. Trayawn Brown, Public Witness

B. Advisory Neighborhood Commissioners

36. Trupti Patel, ANC 2A03

37. Ahmad Abu-Khalaf, ANC 6E05

C. Government Witnesses

38. Johanna Shreve, Chief Tenant Advocate, Office of the Tenant Advocate

39. Brian J. Hanlon, Acting Director, Department of Buildings

40. Garret Whitescarver, Chief Building Official, Department of Buildings

41. Colleen Green, Acting Director, Department of Housing and Community Development

IV. Adjournment

ATTACHMENT 3

Mi nombre is Maria Miranda era duena de un CDH in ward 1 , era duena por largo tiempo prestando servicios a mas de 50 familias a lo largo de los anos, a pesar que cada ano tenemos nuevas regulaciones de OSSE , DOB cumplimos con todas ellas, lamentablemente tuve que entregar mi Licencia y no atender mas a la comunidad, por que no tenemos leyes que nos protejan de HOA que con sus leyes discriminatorias contra family child care y no conocimiento . No solo damos servicio a la comunidad si no tambien damos trabajo y para nosotros es una forma de salir de la pobreza y aportar a la comunidad

Cual es solución

DOB needs to be clearer on definition of the family day care - that the owner lives in the home - the word facility can be misleading and association thought it was a commercial facility y crear leyes que protejan Family Child Cares.

Child development facility" means a licensed community-based center, home, or other structure, regardless of its name, that provides care, supervision, guidance, and other services for infants, toddlers, and preschoolers on a regular basis.

Need regulations that protect the rights - for example the introduction of the BABY Act by CM Nadeau.

Samantha Fallon
Ward 4 Resident & Parent of Home Daycare Attendees

Testimony in support of the BABY Act of 2023
B25-0045 "Banning Associations from Banning Youth"
Prepared for the Committee on Housing

Councilmember White and members of the Housing Committee, my name is Samantha Fallon and I'm the mother of two children who attended the Washington Family Child Development Home, a home daycare under the care of Maria Paola Miranda, formerly located in her private residence in the Parkline Condominium. I'm writing to state my strong support of the BABY Act, based on how meaningful access to Home Care has been for my family, and how difficult our experience was dealing with the bullying, intimidation, and ultimate litigation that shut down Paola's daycare. My fervent hope is that with the passage of this bill, no other home daycare provider has to experience what Paola went through from her building's HOA, and that other care providers are actually incentivized to open to new home daycares so that more families across the district can experience the stellar early childhood education my kids have had with Paola.

Home daycare has been deeply meaningful for my family. Knowing that my children are in a safe, loving, and educational environment has meant that both my husband and I are able to continue working full-time and contributing to the economy. For our family a large daycare center would not have been a good fit, nor would a nanny setup that would not allow for the level of friendship and socialization our children have been exposed to through Paola's care. Additionally, this was the most economical option for our family. They say it takes a village to raise a child, and in a transient, urban environment like DC that village can be difficult to come by. This home daycare was our village, and Paola was both caretaker and teacher to my children, and advisor and alloparenting partner for my husband and I.

That's why the Parkline Homeowners' Association shutting down this daycare was so traumatic for my family, when we were forced to scramble for childcare (as so many families do in this city). After years of costly litigation the HOA was ultimately successful in closing the daycare due to a technicality in their bylaws, which states that owners are not permitted to run commercial endeavors out of their units. This ruling was a shame, since OSSE explicitly defines Child Development Homes as separate entities from their commercial counterparts, Child Development Centers. This particular Child Development Home was fully registered, licensed, insured, and regularly monitored by OSSE; fully permitted to operate by DCRA; and in compliance with District zoning laws based on the definition of a Child Development Home. **The HOA's successful litigation undermines the power of legitimate governing bodies like OSSE and DCRA to set policies applicable to our entire city-wide community, and instead allows these private entities to override the spirit of District regulations at their whim**.

But the HOA's behavior was more than just a logistical nightmare. It represented a truly worrying trend in an "us vs. them" dynamic that I implore you to consider when you vote to right size HOAs'

power in making unilateral decisions around members' livelihoods and the community's access to care. This included everything from aggressive confrontations in front of our children, with board members attacking me for supporting an "illegal" daycare, escalating all the way to filming our kids, who are obviously minors. At that point we had to get the police involved.

I understand that the HOA believes they were looking out for their community first and foremost. But community comes in many different forms, and like it or not, children are part of the community of our neighborhoods and our city—as are the small business owners like Paola who are working in the badly under-staffed early childhood education space and must be protected.

It's hard not to note the racial disparities when I think about how this HOA treated Paola, from informal petitions circulated to try to shut her down to bullying legal tactics that they were within their right to pursue given the ways their bylaws conflict with OSSE & DCRA zoning regulations. The board members we interacted with were exclusively white young professionals far newer to this neighborhood than Paola, who has been a homeowner at the Parkline for 17 years and is one of the many Black, Brown, and immigrant women who overwhelmingly comprise the District's early childhood education workforce, as the Council noted with the passage of the Hearts & Homes Act of 2021.

Given the density of our community, it's increasingly likely that the most common location to host home daycares will continue to be in multi-family residences. **If the precedent is set that HOAs can suppress this public good at will, we are making it that much more difficult for any caregiving entrepreneur to open a new care center in their home. And we desperately need that in this city, so that other families can have the powerful benefit of the safe and loving childcare that my family was so fortunate to experience.**

This bill will protect that benefit. Thank you so much for your time and consideration.

D.C. Land Title Association

c/o Roy L. Kaufmann, Esq.
Jackson & Campbell, P.C.
2300 N Street, N.W.
Washington, DC 20037
(202) 457-6710 RKaufmann@JacksCamp.com

Testimony of
Amy Klein, President
of the
D.C. Land Title Association

Bill 25-0113

"COMMUNITY LAND TRUSTS' ACCESS AND HOMEWONER SUPPORT AMENDMENT ACT OF 2023"

BEFORE THE

Committee on Housing

AT A PUBLIC HEARING

May 18, 2023
10:00 a.m. – Zoom Hearing
John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, DC 20004

Mr. Chair, members of the Council, and staff, my name is Amy Klein and I appear today in my capacity as the President of the D.C. Land Title Association (the "DCLTA") which is the trade association comprised of real estate settlement companies as well as title insurance agents and underwriters conducting business in the District of Columbia to offer testimony on B25-0113, Community Land Trusts Access and Homeowner's Support Amendment Act of 2023 (the "Bill"). We have worked closely with the D.C. Council and look forward to continuing our work with the Council when it comes to matters impacting real property in the District of Columbia.

To be clear, DCLTA takes no position on the policies underpinning the Bill, but we do believe that the Bill needs modifications to avoid unanticipated problems that could adversely affect title to real property and cause delays in the settlement process.

By way of background, interests in real property are conveyed by deed, recorded at the Recorder of Deeds. Our industry is charged with the responsibility of reviewing those public records to ensure that owners and lenders have good, insurable title and that all required processes have been completed to avoid situations whereby a problem effecting the property's title is discovered after closing.

Our review of the public records often goes beyond the records of the Recorder of Deeds. In the District, certain laws such as the Tenant Opportunity to Purchase Act ("TOPA"), which this Bill seeks to amend, require us to look at other records which may not be as perfectly indexed as the records of the Recorder of Deeds.

When our members oversee the sale of tenanted property, they must be sure that all TOPA requirements have been completed prior to closing, and specifically that the

rights of the tenant(s) either have been exercised or have been extinguished. If the TOPA requirements are not completed, closing will be delayed until, to the best of our ability, we are certain that the tenant's TOPA rights have been exercised or extinguished.

There is no official record in the Recorder of Deeds certifying compliance with TOPA. Therefore, our members must gather information from the seller, listing agent, the Department of Housing and Community Development ("DHCD"), and other resources as may be necessary. Upon request, DHCD will provide settlement companies with a Review of File Letter ("ROFL"). The ROFL lists the documents in DHCD's file. For example, the ROFL will state when DHCD received TOPA notices from the current owner/seller; whether it has received a statement of interest from the tenant(s) or tenant organization indicating an interest in purchasing the property; and whether it received a statement of interest from the Mayor indicating its interest in purchasing the property. Based on the ROFL and other documentation obtained, our members decide whether TOPA has been sufficiently complied with such that they may issue title insurance.

The District's Opportunity to Purchase Act ("DOPA") poses a similar compliance hurdle in the closing process. Title insurers are required to ensure that DOPA has been complied with prior to closing.

This Bill amends sections of DOPA to give registered Community Land Trusts ("registered CLTs") purchase rights. Let me take a moment to recognize that the Bill does not specify whether it applies to only housing accommodations with five or more rental units or housing accommodation with any number of units. As previously stated, the Bill amends sections of DOPA and DOPA only applies to housing accommodation

with five or more rental units; thus, it is presumed that the Bill only applies to housing accommodations with five or more rental units.

Under DOPA, the Mayor has "an opportunity to purchase a housing accommodation in the same manner…as the opportunity to purchase is provided to a tenant under subchapter IV…" (subchapter IV refers to TOPA) (See D.C. Code §42-3404.31(a)) This Bill amends D.C. Code §42-3404.36(1) to add that prior to the Mayor assigning its opportunity to purchase "…the Mayor shall offer the right of first refusal to registered [CLTs]." TOPA provides a tenant with two rights: (i) an opportunity to purchase; and (ii) a right of first refusal. DOPA, on the other hand, provides the Mayor with only one right, the opportunity to purchase. Since the Mayor does not appear to have a right of first refusal under DOPA it is not clear what is meant by requiring the Mayor to offer registered CLTs a right of first refusal. Presumably the intention of the legislation is for the Mayor to offer registered CLTs an assignment prior to the Mayor assigning its rights to any other person or entity. The Bill should be amended to clarify the confusion that the language concerning the right of first refusal creates.

Presuming the priority of assignments is what is desired by the Bill (and even if what is truly desired is the creation of a right of first refusal for registered CLTs), the ability to verify whether the process has been followed creates a problem for our industry. Specifically, our industry would have to verify: a) who all the registered CLTs are; b) that an offer (whether it be an offer of assignment of an opportunity to purchase or right of first refusal) was made and delivered to all the registered CLTs; c) whether and when all CLTs received the offer; d) whether any registered CLT responded to or

accepted the offer of assignment or right of first refusal; and e) the status of any efforts by the registered CLT to exercise the rights assigned to it by the Mayor. We offer that a solution would be for the Bill to require that the foregoing be required notices that the Mayor must provide to DHCD (and to whom whoever else may be appropriate) such at this information would become part of DHCD's file and in return reported in the ROFL. This would be a simple, straight-forward method of determining compliance with this Bill. DCLTA asks for this amendment.

Additionally, DCLTA offers the following, specific issues presented by the Bill:

At lines 89-95, the Mayor is required to send a notice of opportunity to purchase to all registered CLTs within 3 business days "*of* receiving notice" from the owner of the property, if the Mayor does not intend to purchase the property. Stylistically, the "of" should be replaced by "after"[1], but, more importantly, there is a problem with timelines. Under DOPA, the Mayor has 30 days after receiving an offer of sale from the owner to decide if it wants to purchase the property. (See D.C. Code §42-3404.32(b)). We see two problems created by the wording of the Bill. First, if the Mayor does not intend to purchase the property, then the Mayor's opportunity to purchase the property ceases to exist and there are no rights that can be assigned. Second, the timeline for the Mayor to decide whether or not it wants to purchase the property (30 days after the Mayor's receipt of the owner's offer) does not align with the timeline by which the Mayor must inform the registered CLTs that it has decided not to purchase the property (3 days after the Mayor's receipt of the owner's offer). There's a 27-day delta. If the Mayor chooses to

[1] This same correction should be made to line 103.

exercise its opportunity to purchase, DOPA, in its current form already provides the Mayor with the right to assign the opportunity to purchase. Thus, this language is superfluous and confusing.

If the intention of the Bill is to create a third class of parties, registered CLT (tenants and the Mayor being the other two classes of parties), with an opportunity to purchase rental housing accommodation, then the Bill will need a significant rewrite to accomplish that goal and to expressly state how a registered CLT would exercise its opportunity to purchase. If the intention of the Bill is to give registered CLTs priority over other potential assignees, then the Council should consider amending the Bill to say just that.

At lines 96-98, the CLT's are given broad rights of redress – the same rights that tenants have under TOPA to enforce owner compliance. Under TOPA, the owner/seller has the responsibility to send notice to the tenants. Under this Bill, however, the owner has no duty to the registered CLTs. It is the Mayor that has the duties to the registered CLTs. Therefore, it should be the Mayor against whom the registered CLTs can seek its remedy, not the owner. Further it is difficult see how a registered CLT could legally seek a remedy from someone who owed it no duty. DCLTA suggests that this section of the Bill be deleted or revised to properly give the registered CLTs rights of redress against the Mayor.

Section 444 of the Bill (beginning at Line 179) sets limitations on CLTs as purchasers. Subparagraph (a) appears to attempt to address limitations when a registered CLT desires to convert the housing accommodation from rental housing to

condominiums or cooperatives. Generally, the language of subparagraph (a) references offering tenants such shares or membership interests. While this may address conversion of housing accommodations into cooperatives, the offering of shares or membership interests is not applicable to condominium conversions.

At line 213, a word is missing. The Bill states that "For every day the owner delays in providing [missing word] necessary to complete the sale, the negotiation period shall be extended by one day." Presumably the missing word is "information" or a similar word. If that is the case, the Bill should further specify what constitutes the information that would extend the negotiation period.

Additionally, should the Council move forward with revisions to TOPA and DOPA as is contemplated by this Bill, the DCLTA, respectively request that § 42-3404.03 be amended to allow owners to provide a tenant(s) a written copy of the offer of sale by: (i) first-class mail, (ii) a delivery service providing delivery tracking confirmation, and (iii) by hand; in addition to providing a copy of the offer of sale by certified mail as is now required by the law. Documentation provided under § 42-3404.09 (addressing single family accommodations) is currently allowed to be delivered by all four methods. Further, § 42-3404.08 (addressing the right of first refusal) puts no limitations on the methods by which a right of first refusal may be delivered to a tenant(s). Additionally, DHCD's latest version of the "Offer of Sale for Housing Accommodations with Five (5) or more Rental Units (Form A)" (the form used to provide tenants an offer of sale when a housing accommodation has five or more rental units) states "[The owner or owner's agent] agree[s] to give each tenant listed in Exhibit

A a copy of the offer of sale on the date [the owner or owner's agent] submit[s] it to DHCD." The form is completely silent as to fact that the offer of sale must be delivered to the tenant by certified mail under the law which could lead to offer of sale being delivered by a method that is not incompliance with the law. Lastly, certified mail has become antiquated, and the tracking information provided by the United States Parcel Services for certified mail is not always reliable. Intended recipients of certified mail, for whatever reason the reason may be, tend not to pick up their certified mail. In the case of TOPA, the reluctance to pick of certified mail means that the tenant(s) is not receiving or there is a significant delay in receiving import (and legally necessary) information regarding his or her rights concerning the property in which he or she may live. Allowing delivery of the offer of sale by any of the four methods listed above ensures that the tenant(s) is timely informed of his or her rights under TOPA.

The DC Land Title Association respectfully submits that these issues need to be explored and rectified. We need a foolproof method of determining compliance with the Bill to avoid delays in closing and to ensure that purchasers are not saddled with problems after closing.

If the D.C. Land Title Association can be of assistance to the Council, we would welcome that opportunity.

Respectfully submitted,

DC Land Title Association

By: Amy E. Klein
President

5/18/2023 Public Testimony About DCHA

To Whom It May Concern:

My name is Penda Byrd and I have been a property owner in Ward 5 for over 20 years. I am writing to share my concerns about the DC Housing Authority's (DCHA's) disorganization, lack of adherence to procedures, and delayed communications.

DCHA has strayed from defined standard operating procedures (SOPs) and has not paid attention to details and that hurts both tenant and homeowner. In my case, the agency did not follow proper procedures when in March 2022 they approved an incomplete Housing Choice Voucher Program (HCVP) payment contract for a jointly owned property with an entity that did not provide accurate information nor all required information.

When the oversight was brought to DCHA's attention in August 2022, the agency stumbled to correct the issue, thus putting both the tenant and homeowner at risk of losing housing. Although the agency acknowledged their "oversight" it has taken them over 5 months to draw a conclusion which is now resulting in the tenant being issued an emergency transfer and the homeowners headed to foreclosure.

I don't know how unique my situation is, but I believe it sheds light on holes in DCHA processes. Owners are required to prove ownership and consent from all parties but DCHA overlooked this requirement and proceeded to rent the home without both owners consent or an operating agreement between the owners and property mgmt company.

There is also an important piece of information which DCHA does not have in their current procedures, which is whether or not the home has a mortgage. In my case, I am the only borrower for the mortgage yet I was totally excluded from the HCVP payment contract. Now I am fighting to avoid foreclosure and the HCVP tenant who has been living in my home for over a year has just over 30 days to move out.

DCHA procedures need to be closely examined and updated to ensure submitted documentation is actually reviewed and not just skimmed to check a box. They also need to take an extra 3 minutes to look at tax and records to ensure the people who own the property are the ones who agreements are being made with.

I believe DCHA should add a new piece of criteria which is to include mortgage information in the HCVP application. Adding this information will help protect the tenants because in the current setup a landlord can receive federal money and have no obligation to use that money to maintain ownership of the home.

Tenants have enough to deal with and should be able to enjoy their homes and focus on their lives. DCHA's job should be to protect and place tenants in reliable homes so they should not have to deal with an untimely removal due to foreclosure.

Thank you,

Penda Byrd
Co-owner of
60 T St NW
Washington, DC, 20001
[redacted]

TESTIMONY OF TERESA ASPINWALL
H0USING COMMITTEE, ROBERT WHITE, CHAIR
ZOOM PLATFORM – THURSDAY, MAY 18TH, 2023

Good morning Councilmember White and members of the Housing Committee.

My name is Teresa Aspinwall and I am a long-time resident of the District of Columbia and Director of the Multicultural Spanish Speaking Providers Association (MSSPA).

On behalf of MSSPA members, I want to thank you and members of this committee for championing the Birth to Three law and for investing and supporting the District's Early Childhood Educators.

Today, I am here to ask for your support for the "Banning Associations from Banning Youth Amendment Act of 2023 (B25-0045) also known as the "BABY Act". I also ask for the committee's consideration and vote to move this bill out of committee for consideration by the Council of the Whole.

The BABY Act addresses the lack of protection for family child care programs and begins to address housing discrimination that child care providers are facing in the District. As you will hear today a provider was ordered to close down her home childcare program because it was against the Homeowners Association (HOA) bylaws. This homeowner had operated a licensed, regulation-compliant, program for over 10 years.

Family Child Development programs are an integral part of the DC's early childhood mixed-delivery system. Most family child care providers serve up to six children in the home and are more affordable than centers. These programs often serve certain populations that include infants and toddlers with special needs and often provide culturally-based learning within communities.

Child care providers offer an essential service to working families and they encourage young children to grow stronger each day all while taking care of their own families. These mostly black and brown women are superheros in our communities! Superheroes, who unfortunately face housing discrimination which ultimately reduce childcare options in every neighborhood.

Legislation such as the BABY Act will help protect providers from housing discrimination inside HOAs. An example of protective legislation is California's Keeping Kids Close to Home Act which considers family child care homes a **residential use of property, not a business use.** This law states that HOAs cannot prohibit family child care homes through instruments such Covenants, Conditions, and Restrictions. Furthermore, the law makes it illegal to not sell or rent a condo only because they are a child care home provider or asking tenants to sign a contract promising not to provide care to children from their home.

The District has an opportunity to help stabilize and protect family child care homes through the passage of the BABY Act. Passage of the BABY Act not only addresses discriminatory practices but is aligned to many city priorities and initiatives.

The BABY Act aligns with the District's commitment to making home ownership attainable and equitable in a market that is becoming increasingly more expensive. Condominium homes offer an affordable housing option. Establishing a family child care program in these neighborhood residences should be a "matter of right".

The BABY Act also aligns with Social Housing Development Projects that include and provide access for traditionally marginalized communities. These project designs will include the existence of community amenities that offer public purposes such as Child Development programs.

Passage of the BABY Act will send a clear message that DC supports early childhood education including Family Child Care Homes and that home programs are a matter of right and protected by fair housing laws. This increased protection will make home programs more accessible for working families.

In closing, I ask for your support for the "Banning Associations from Banning Youth Amendment Act of 2023 (B25-0045) by voting to move this bill out of committee for consideration by the Council of the Whole.

Thank you for the opportunity to testify.

DC Council, Committee on Housing
Chairperson Robert C. White, Jr.
Testimony of Marta Beresin, Ward 3 Resident and
Deputy Director, Health Justice Alliance Law Clinic, Georgetown Law Center on
B25-0074 Fairness in Renting Clarification Amendment Act of 2023
May 18th, 2023, 10:00 am

Thank you Councilmember White and members of the Committee. My name is Marta Beresin and I'm a 35-year DC resident and Deputy Director of the Health Justice Alliance Law Clinic at Georgetown Law Center (HJA). While I'm testifying in my individual capacity, it's my work with HJA's very low-income and often housing-insecure clients over the past four years that informs my testimony regarding the Fairness in Renting Clarification Amendment Act of 2023.

HJA is part of a medical-legal partnership between Georgetown's Law and Medical Centers. Our law clinic partners with a community pediatric practice on wheels and two school-based health centers. All three practices screen patients for "health harming legal needs" and refer to HJA for a range of legal problems that impact health, including housing conditions like mold and lead.

DC's recently enacted Tenant Screening Act (TSA) has helped to address some of the many barriers our clients face in relocating to safe and healthy housing such as exorbitant application fees and hidden forms of voucher discrimination. The Fairness in Renting Clarification Amendment Act of 2023 will help to limit unfair fees associated with rental applications and rental screening. It does not go far enough, however, to address all the ways in which landlords commonly extract unfair fees from prospective tenants during the application process. In addition to the application fee, our clients have been charged so-called "processing fees", "holding fees" and "move-in fees", often at the time of application. These fees make renting from such landlords impossible for someone with a voucher who, by definition, is low-income.

To give you an example, HJA's client Mr. Smith, an Uber driver, resides with his wife and two young children. The family has struggled for 9 months to move from unhealthy housing using their Section 8 transfer voucher, the delay negatively impacting Ms. Smith's health. They seek to remain in the Navy Yard area, where they have lived for eight years. Despite applying for more than two dozen apartment units, they have been unable to relocate to healthy housing. During their search, they have encountered source of income discrimination, companies that charge application fees of $50 per person rather than per household, and companies that charge so-called "holding fees" of up to $600 in order to submit or process an application. After the family scraped together $600 to apply unsuccessfully for a unit last fall, the company did not return the "holding fee" for six months. For low-income families like the Smiths, these fees are substantial barriers to moving to healthy housing and arguably source of income discrimination.

Most frustrating for families like the Smiths is that there are landlords in the Navy Yard area of DC with literally dozens of empty two-bedroom apartments who will do all they can to avoid renting to them because they have vouchers. In addition to charging exorbitant application fees, many landlords offer so-called "concessions" to applicants who can lease quickly (i.e., do not

need DCHA's approval). These "concessions" work in various ways but usually offer applicants 1-2 months of rent credited back to a lessee's account but only after residing in the unit for 2-6 months. If the concessions were spread over the 12-month lease, the rent for many of these units would be under the Section 8 approved rent for the submarket. But property management companies refuse to do this, thereby effectively excluding voucher holders.

Please strengthen B25-0074 to ensure it meets the bill's goals of reducing barriers for tenants:

1) Make it clear that the $50 limit on application fees is **per household** not per adult member of the household;

2) Make it clear that "application fee" includes not only processing fees but "**any fee** that is required by the housing provider as a prerequisite to applying for a unit or processing an applicant's application";

3) Require housing providers offering "concessions" to divide them across the life of the lease for tenants using housing vouchers.

Given the relative lack of wealth amongst Black and Brown families in Washington, DC compared to white families (based on a long history of structural racism in housing in DC), excessive fees for rental housing further racial inequality and discriminate based on both race and source of income. These changes to B25-0074 will address unfair fees comprehensively and help ensure that families like the Smiths can move to healthy housing expeditiously. I'm happy to work with any of your offices to develop language around these recommendations. I'm also happy to answer any questions. Thank you.

Testimony of Ginger Rumph, Executive Director
Douglass Community Land Trust
Committee on Housing, Council of the District of Columbia
B25-0113: Community Land Trusts' Access and Homeowner Support Amendment Act of 2023
Thursday, May 18, 2023

Thank you, Chairman White, Councilmember Henderson and members of the Committee. My name is Ginger Rumph. I'm a Ward 4 resident, and executive director of the Douglass Community Land Trust (Douglass CLT).

As you know, Douglass CLT is organized to secure permanent affordability and provide ongoing, collective stewardship for current and future generations of Douglass Commonwealth residents, including homebuyers – in condos, co-ops, and single-family homes - renters, and local business owners. We are very intentionally a membership nonprofit, centered on racial and economic equity. We act with urgency to contribute solutions to address the intensity of displacement from gentrification. Our portfolio now includes 225 permanently affordable homes, with forty-seven (47) more in process and over 150 more in our pipeline. And critically, Douglass CLT has more than 200 members, a number of whom are here today to talk about the Community Land Trusts' Access and Homeowner Support Amendment Act of 2023.

We're very appreciative of Councilmember Henderson for introducing this bill and for the interest /additional sign-ons. I preface my remarks by saying that we suggest holding a working session with staff and other interested parties to refine the legislation, and perhaps draw in some additional elements that may strengthen the ability of the CLT model to be successful in DC.

Unfortunately, our attention on this legislation has been splintered by having to chase ways to restore $2m that had been awarded by Council to Douglass CLT, yet was swept for use in the FY24 budget. We are gravely disappointed by the lack of resolution - though remain optimistic that supporters of the CLT model will help make good on the commitments to the estimated 54 households (and generations beyond them) to which the funding was committed, along with the small but critical amount of operating funds.

As it relates to the definition of a CLT, we offer commentary of Organizational (what it is) and Operational (what it does) criteria. Board member Sheldon Clark will talk more about the Operational Criteria, including expanding the definition beyond provision of housing, to include a variety of commercial properties as well; being very clear that we're talking about *permanent* affordability; and that the work post-acquisition is just as important, and includes a host of stewardship activities.

Organizational Criteria

- In addition to the requirement to be a nonprofit 501c3 serving DC, with a commitment to preventing displacement and maintaining affordability, we would ADD criteria
  1) That the CLT be a Membership organization open to people living in the housing or working in the commercial spaces it provides and to community representatives from the neighborhoods it serves;
  2) That the membership is entitled to elect a majority of the seats on the board of directors and to approve amendments to the organization's bylaws;
  3) And that it have a board that is reflective of the community with dedicated seats on the board composed of equal numbers of (i) people living in homes or using lands under the organization's stewardship, (ii) community representatives; and (iii) expertise as required to oversee the effective functioning of the organization / other category of persons described in the bylaws of the organization
  4) We strongly agree that a CLT should demonstrate "commitment to community engagement" And these additional criteria reflect that commitment and enable the CLT to successfully operate in this manner.

- The provision that the CLT "Is not affiliated with or a subsidiary of an organization that is organized or operating for private gain" is helpful to weed out those who would use the CLT designation not for public benefit.
- Demonstration of Capacity [beg. ln 61]: We agree with the spirit of these provisions, and want to ensure that there is clarity of expectation as well as synchronicity in what developers are requested to provide and what a CLT is requested to provide.
    1) For instance, what will suffice to show "Written support from community members?" Are membership forms proof of support? Petitions? How often will the organization be required to update? What the expectation that an administration plan would cover? Are other nonprofits operating in DC expected to have this in order to operate here?
    2) What "documentation showing the organization's finances" would be distinct from the required submission of DC tax forms and federal 990s? Would this be distinct from what is required to remain a nonprofit in good standing in DC? And what is expected for a fundraising plan and how often would that have to be updated? Would that provide clarity of interest?
    3) The last RFP seeking DOPA pre-qualified assignees appear to ask for less information than what is sought to demonstrate CLT capacity. Particularly given that the CLT rights come after those of the Mayor (and the assignees), we want to be sure that the requirements to demonstrate capacity measure substantially the same items.
    4) The provision about demonstrating the capacity to own and manage [ln 81] seems to relate to organizations which own and operate the buildings or improvements themselves. It should also allow for and require CLTs to demonstrate the ability to successfully uphold affordability covenants contained in land leases and deed restricted covenants. Douglass CLT, for example, typically partners with a mission aligned developer or resident group that would own and manage the improvement, and except in certain circumstances, does not own the improvement itself.

<u>On the Assignment of District Rights to Purchase Property [42–3404.36]</u>

1) We generally like that it closely follows the DOPA language, including strong protections for tenants and retaining affordability.
2) We would like to get additional clarity about timing of registrations for TOPA and DOPA and what that means for how long the CLT would have to register its interest in the property. For example, the Mayor has to register within 30 days, even though the tenants have 45 days. If the Mayor does not register and waits the full 30 days to decide, then the Mayor would have another 3 business days to notify all CLTs. [ln 89] Also, would the Mayor be required to notify all CLTs whether or not a Tenant Organization registered for its rights? Without such a requirement, how would the CLT know whether their registration has been preempted by a Tenant Organization?
3) In Section 444, we would like to gain clarity on how existing protections would go away and whether this section is needed. Douglass CLT specifically has an interest in securing tenant rights but is wary of placing additional burdens and lengthening time frames if its already part of the original development plan.
4) For CLTs that might serve in the capacity of owner of the improvement, we agree there should be clear protections for the existing residents and preservation of affordability at generally the income ranges of existing residents.

<u>On the CLT Advance Access to Tax Sale Properties</u>

As we understand, the bill provides a CLT one-week advance notice to review opportunities and get a bid together but the CLT has to complete with other bidders because the sale does not close early. We would like to explore with you some additional options, such as the transfer of tax certificate (which still have to be redeemed) to the CLT if no bids are received on a property.

Additional incentives for "Bargain sales"

We would like to explore with you additional /layered incentives for households to sell homes at below market rate for the purpose of keeping such home permanently affordable to families at no more than 80% or the MFI. Douglass CLT has completed our second Pay It Forward Single-family homeownership bargain sale, in which middle income families walked away from, and left in the property several hundred thousand in equity. With no marketing whatsoever, we've been approached for a fifth time for such a sale but to really kick this off; there is clearly a level of interest that could be tapped as one additional pathway to secure homeownership opportunities for generations of DC residents.

In sum, our goals for CLT legislation would be to

- Embed the CLT model as part of DC's community development ecosystem, another mechanism to help solve for affordability for current and future generations while providing collective control; and
- Create government funding mechanism for CLT(s)
- Ensure that any CLT operating in DC will be high functioning and with a true commitment to equity, permanent affordability, engagement and ongoing stewardship.

Thank you for this opportunity to testify.

D.C. TENANTS' RIGHTS CENTER
WWW.DCTENANTS.COM

B25-0074 - the "Fairness in Renting Clarification Amendment Act of 2023"

Testimony of Leigh Higgins, Senior Attorney at the D.C. Tenants' Rights Center

Before the Committee on Housing
Councilmember Robert C. White, Jr., Chair

I am submitting written testimony on behalf of the D.C. Tenants' Rights Center. We are a small private law firm that helps tenants with issues including eviction, lease terminations, repairs, security deposits, TOPA, and rent control issues.

We support the **Fairness in Renting Clarification Amendment Act of 2023** (B25-0074) but suggest a few changes below.

The Clarification of Fees and Extension of Notice Period for Rent Increases

We support the clarification of application fee limits proposed in this bill (lines 38-57). However, we do not support effectively doubling the permissible fee to $100 by allowing prospective housing providers to charge both an application fee and a processing fee of $50 each. If the intent of the legislation is to allow prospective housing providers to ONLY charge one or the other, please change the language to make that clear.

Please also clarify that the fee limit applies per unit so prospective housing providers are not permitted to stack the application or processing fees for each person applying to rent a housing accommodation together. For example, if a married couple with children is applying to rent one unit,

the prospective housing provider should not be permitted to charge separate application or processing fees for each person. The limit should be per unit, not per person.

Further, it should be made clear that NO OTHER FEES may be charged to apply to rent a housing accommodation in the District. This helps reduce the risk that housing providers invent new ways to continue to use the application process as a way to increase their profits by placing additional financial burdens on the backs of prospective tenants. One way to achieve this goal is to remove the second "processing fee" option and clarify the definition of "application fee" to broadly include ALL fees charged at the time of application prior to signing a lease.

We also support the additional time before a rent increase can become effective (lines 65-69). It is very difficult for tenants to make a plan to move in just 30 days, especially given the shortage of other rent controlled or affordable units to move into. This is a clear and common-sense change that helps tenants in the District.

Security Deposit Clarifications

First, it is the position of DCTRC that it is **already the law** that housing providers may not charge tenants for or withhold the costs of repairs that landlords are legally required to make. If a landlord is required by law (including the Housing Code, Property Maintenance Code or the Implied Warranty of Habitability) to make a repair, they cannot shift the cost of that repair to the tenant by either charging them for it or withholding that amount from the security deposit.[1] Generally, Administrative

[1] *Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970)

Law Judges at OAH have found that there is a short list of permissible reasons to withhold from a security deposit: unpaid rent or utilities; damages suffered by reason of noncompliance with a lease agreement; and damages resulting from a tenant's willful or negligent damage to the property (damages beyond ordinary wear and tear). While clarifying this in the Code is helpful, we urge the Council to also make it clear that just because there are now two specific things that are impermissible to withhold from a security deposit in the Code, the failure to exclude other creative ideas is NOT permission to withhold them from a security deposit. Please clarify that this is a **non-exclusive list of impermissible withholdings** from a security deposit.

Further, the proposed language permits a landlord to withhold an amount that allows the landlord to "replace damaged items." **Replacement value is not the proper measure of a landlord's damages in most cases**. This issue often comes up in connection to small damages to flooring. In an analogous case, the D.C. Court of Appeals held that the proper measure of damages is the diminution of value and not the full replacement cost.[2] The revisions to the Code should not permit a landlord to withhold the cost of replacing (or even refinishing) a full wood floor due to a scratch that is small in area and limited to one or two boards. That cannot be the intended result of this amendment. Landlords should only be permitted to withhold an amount that matches the reduction in value of the unit or item, not the full replacement cost.

Our office helps many tenants who have security deposit disputes with their landlords after moving out. In a typical case, a tenant might call us several months after moving out, frustrated that

[2] Wentworth v. Air Line Pilots Ass'n, 336 A.2d 542, 545 (D.C. 1975

they haven't heard anything from their former landlord about their security deposit. We often reach out to the landlord, and if any response is provided, it is after the statutory deadlines have passed and often includes charges that are improper. Then a tenant must decide whether to fight this issue by filing a complaint in the D.C. Courts or a Tenant Petition. Although the current law provides for the payment of attorneys' fees at the end of a case if a tenant prevails, litigation can be a long, expensive and stressful process. Many tenants make the rational economic decision to simply walk away and not fight to get their deposit back from a former landlord, even if the deposit has been wrongfully withheld.

It is human nature to find ways to justify keeping money that is in your possession. Landlords are endlessly creative in coming up with reasons to hold onto the money that has been in their account for months or years, especially if their relationship with the tenant has been "difficult" (which often happens when a tenant has pushed a landlord to make legally required repairs). Even with the burden shifting and fee shifting provisions in the current law, it is often in the landlord's financial interest to simply hold onto that money and wait out a former tenant who doesn't have the means or time to litigate and then collect on a judgment. There are no automatic enforcement remedies that make it easy for tenants to get their money back and encourage landlords to follow the law that is already in place.

If the Council is considering a larger overhaul of the security deposit laws, we would encourage a broader discussion of both requirements for landlords and remedies for tenants that are automatic and easier for tenants to enforce. For example, there is no penalty associated with a landlord's failure to keep the deposit in a separate interest-bearing account or for charging more than the allowed deposit (equal to one month's rent). If a landlord doesn't follow the law, or properly give notice of an

inspection, or doesn't inspect the unit quickly after a tenant moves out, or doesn't send the notice of intent to withhold in a timely manner, that landlord should forfeit the right to keep the deposit for any reason. Our office is happy to help this Committee work on other revision ideas in the future.

Thank you for your attention to the ongoing struggle of tenants who deserve to be able to afford safe and healthy homes in the District. The Center supports Bill 25-0074 and asks that you further strengthen this bill to protect tenants.

Thank you to the Councilmember for holding this hearing,

My name is Travis Ballie, Ward 7 resident and Acting President of the 1610-1624 26th Place Condominiums Easement Areas Association, Inc. We represent eight small condo associations representing dozens of District residents, including several families with young children or expecting. I am here to testify in support of the Banning Associations from Banning Youth Amendment Act of 2022. Simply put, our babies and youth should be welcome in all our neighborhoods and their parents and caregivers deserve more early learning options in their communities.

My Condo Associations would welcome the opportunity to provide a critical service to our community if one of our neighbors were to step up and open a home based early learning center. Home based early learning centers have several advantages over early learning centers in commercial rental space. Among those benefits, home based centers tend to have smaller class sizes, more one-on-one attention, and can often have a family like environment. Mixed age groups in home care settings can offer socialization between siblings. We know that increased access to child care, especially near where workers actually live, means new and sustained access to workforce participation for single mothers and working parents. This is an incredible benefit to residents of any condo association and larger neighborhood. In addition, the vast majority of home-based early learning owner-providers are women of color, so the BABY Act would lower a barrier to these business entrepreneurs who are ready to provide their service.

In my day job, I work day in and out with parents and caregivers in the District to fight for full funding and implementation of the Birth to Three Act which, ideally by 2028 – will guarantee all DC children under three have access to high-quality early learning and health care opportunities. The BABY Act is a critical complementary legislation to expand more early learning options for our Residents. Without affordable, reliable and high-quality childcare, tens of thousands of parents and caregivers in the District cannot fully enter the workforce. Childcare is already the 2nd largest expense in a family's budget.

The BABY Act is a critical piece of legislation to make early learning education more affordable for District residents. On this note of affordability, I wanted to share the story of my friend Natika, who can no longer afford her $21,000 a year childcare costs in DC. Natika invested in DC and was a proud Ward 7 property owner. A few years ago, Natika left DC to move to Illinois, where she can rely on family to offset some of her childcare costs. Another neighbor of mine, Heys Cooper, went $25,000 into credit card debt in order to pay for her child care needs.

What my neighbors Natika and Heys are facing is by design. Structural racism is often the root of the disparities facing Black and brown families in the District, especially East of the River.

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The Washington LEGAL CLINIC for the Homeless
A Voice for Housing and Justice

D.C. Council Committee on Housing- *Fairness in Renting Clarification Amendment Act* Hearing- May 18, 2022

Testimony of Brittany K. Ruffin, Director of Policy and Advocacy, The Washington Legal Clinic for the Homeless

Good morning, Councilmembers. I am Brittany K. Ruffin, Director of Policy and Advocacy at the Washington Legal Clinic for the Homeless. Since 1987, the WLCH has envisioned and worked towards a just and inclusive community for all residents of the District of Columbia—where housing is a human right and where every individual and family has equal access to the resources they need to thrive.

First--We support the provision of the *Fairness in Renting Clarification Amendment Act* that extends the rent increase notification. More advanced notice provides better opportunity for preparation and choice of alternative options, supporting household stabilization. The focus of my testimony, however, centers on WLCH's strong opposition to the provision allowing landlords to add a processing fee in addition to the application fee at the time of application.

In the fall of 2015, in the basement of our office, a group of community members, service providers, advocates and District agency representatives met initially as a workgroup of the Interagency Council on Homelessness (ICH) to identify major barriers to housing and possible solutions. The group later separated from the ICH and became an independent community coalition. Beyond general housing unaffordability, we identified criminal history, rental and eviction history, credit history, voucher discrimination and ridiculously high fees as the biggest barriers applicants faced when attempting to obtain housing. Our first major legislative effort as a coalition was to advocate for the Fair Criminal Records Screening Act for Housing.

Next, we turned to considering how to minimize rental and credit barriers, implement clear expectations for applicants and landlords, and create a fair standard for screening people with vouchers. We held dozens of listening sessions and focus groups with low-income residents, many experiencing homelessness, to learn about their frustrations within the search for housing and their ideas for solutions to break down the barriers. Along with complaints about lack of application status updates, lack of information as to the reason for denial, and concerns about discriminatory behavior towards applicants with vouchers, the issue of excessive application fees was a constant refrain. People reported varying exorbitant application fees, some upwards of $150 per adult. Some were able to pull together money to apply, but many had no choice but to continue searching for housing (*even if* they had a

housing subsidy that would have paid for their eventual rent) simply because they could not afford the application fee. Those insightful conversations served as the framework for the important legislation that passed last year. We worked closely with Council members and staff to advance an impactful piece of legislation to lower barriers to housing that would get Council support.

During the legislative conversations, the $50 fee cap was a provision that was increased from our original $35 fee cap proposal after Councilmembers reported conversations with landlord groups that $50 would be more appropriate for smaller landlords that did not have the benefit of large contracts with tenant screening companies that kept screening pricing lower for them. For us, a $50 application fee cap was not ideal, but it was better than no cap and much better than the varying $100+ application fees that low-income DC residents and case managers reported.

At its foundation, an application fee is supposed to be for the purpose of processing the applicant's application—which is conducting any background screening associated with evaluating the applicant. The current language of this proposed amendment indicates that landlords can request an application fee or processing fee. If that language were meant to indicate a choice of only one of the fees at the time of application, it would not be overtly harmful, despite adding an unnecessary layer of confusion by treating the two fees as distinct. However, considering the language in the legislative summary attached to the amendment and confirmation by Councilmember Henderson's staff when asked for clarification prior to this hearing, the intent does appear to be to add the possibility of an additional and separate processing fee. Adding the ability for landlords to charge a separate $50 processing fee *in addition to* an application fee is redundant, unnecessary, and harmful.

An application fee is not supposed to be a source of income for landlords. Permitting a total of $100 in fees at the time of application serves to be just that while significantly minimizing access to housing for thousands of D.C. residents in the midst of D.C.'s deepening affordable housing crisis. It is also contrary to the original intent and spirit of the fee cap that was included within the original legislation last year.

Even after the passage of the legislation, community members and case managers are reporting that some landlords are already charging separate additional fees such as "administrative" fees or "holding" fees at the time of application in an attempt to circumvent the $50 application fee cap. We wholeheartedly support the Council's consideration of this issue and solutions to curb the emergence of any additional and unnecessary fees that further burden applicants; however, allowing another fee in addition to an application fee to do precisely what an application fee is meant to do is not the way to address the issue. We encourage the Council and this Committee to recognize the ways in which excessive application fees can be and *are* used as proxies for income and race to discriminate and restrict housing access.

Instead of adding and defining an additional "processing fee", we suggest adding clarifying language to broadly define "application fee" to be inclusive of what this amendment has defined as a "processing fee" and any other terms or fees that describe the same consideration of a housing applicant. All fees related to the application must fall within the existing $50 application fee cap.

We implore this Committee and Council to reject any additional fees at the time of application besides the application fee and any other provision that unnecessarily increases the burden for DC residents simply trying to find a place a live. The Eviction Record Sealing and Fairness in Renting Act was a truly collaborative effort. We look forward to future conversations to build upon the legislation and further housing access. However, the Council should not support any provisions that reverse the legislative progress already made by increasing barriers for D.C. residents.

Testimony of Sheldon Clark, Board Member
Douglass Community Land Trust
Committee on Housing, Council of the District of Columbia
B25-0113: Community Land Trusts' Access and Homeowner Support Amendment Act of 2023
Thursday, May 18, 2023

Thank you, Chairman White, Councilmember Henderson and members of the Committee. My name is Sheldon Clark, architect, business owner, and board member of the Douglass Community Land Trust (Douglass CLT).

Even though we've officially been an incorporated nonprofit for a little more than 2 ½ years, I've been participating with Douglass CLT for the past 5+ years, beginning from the days where a group of us were meeting to talk about ways to stem displacement and connect that with community voices around this matter. I'm proud to be part of a growing membership that is focused on preserving affordability and increasing wealth building opportunities for homeowners, renters, small business owners and fighting displacement throughout DC.

I'll start by saying that Douglass CLT's approach is to partner with community residents, developers, and tenants to secure permanent affordability and ensure ongoing stewardship. If we know about a building going up for sale that is eligible under this bill (triggers TOPA), then we would be supporting the residents to successfully exercise their rights. Over the years, we have been notified by housing counselors who are organizing tenants and by community members who knew of buildings going up for sale. We have also been notified by and approached by developers. <u>The primary issue is, almost always, financial.</u> The sale price is too high and rehab costs too expensive to make a viable project. And , if it were deemed potentially financially viable, then the greatest hurdle is getting funding needed to acquire the building, which also necessitates having a plan for *permanen*t financing.

For Douglass CLT we asked: when would a CLT- Opportunity to Purchase make sense and are we solving for the right thing? The answer for us is that this mechanism could be useful in circumstances where tenants decide not to exercise rights – perhaps they were delayed in organizing or the Tenant Assoc didn't get properly certified or certified in time. And, the Mayor decides not to exercise their rights via a Qualified DOPA assignee/ developer. So, if we can preserve affordability for some number of households in this way, then it is worth it.

As you have heard from many of our members we'd most immediately like to solve for is funding. I will reiterate that we need your help to restore the $2M in appropriated funds that is already committed to people: this includes 34 cooperative homes; 12 new construction homes for ownership; up to 25 additional co-op units; and 2 Pay It Forward Homes.(On that last point, two homeowners sold us their homes for 25% and 33% below market, so that we can in turn resell to a household of low to moderate income, because they want to actively work against displacement

Next, as my colleague Ginger previewed there are some additional concerns we have with the Operational Criteria:

1) The legislation only references housing, but we'd like to see it be more inclusive and representative of the variety of CLT uses and property types. CLTs can be and are successfully and effectively used to secure permanent affordability and steward commercial properties as well, including mixed uses, small business, cultural institutions, nonprofit spaces, community spaces, and gardens.
2) The legislation does not specify Permanent Affordability, which is a foundational aspect of CLTs. Most CLTs will employ a 99-year land lease that is renewable. If we are aiming to create and maintain a stock of affordable spaces, we need to ensure the CLT definition matches that intent of permanent affordability. A recognized CLT should ensures the permanent affordability of housing and or commercial space, using a ground lease, deed covenant, or other durable contractual mechanism to limit the price for which the improvement may be resold or rented to subsequent occupants. With dutiful planning and ongoing stewardship and compliance, properties can remain affordable in perpetuity – and therefore we advocate for affordability "in perpetuity" for public land dispositions and prioritized for DHCD-funded projects, and for the improvement and expansion of Inclusionary Zoning, which already operates under permanent affordability restrictions.
3) We would further like to see the statement regarding the purpose of the CLT reflect or at least allow for the wide range of stewardship activities that support not just the property, but the well-being and prosperity of the people residing in and working in the CTL properties. [ln 52] Stewardship activities do include monitoring and enforcing contractual controls over the occupancy, use, financing, improvement, and resale of the property in order to preserve its affordability, to promote upkeep, and to protect the occupants' security of tenure when threatened by foreclosure or by other disruptions that may cause the loss of a property. But it also includes assisting sellers and buyers in the process; facilitating positive social networks and effective governance; as well as additional asset building.

4 Fourthly, it is critical to underscore the effectiveness of a single CLT at scale. At scale the organization is better able to sustain its services that go well beyond property acquisition. If a foundational principle

of CLTs is permanent affordability then the CLT needs to have the support to be around in perpetuity to provide stewardship services for those properties.

Thank you for this opportunity to testify and I'd be happy to be part of a working group on this issue.

Testimony of the
Apartment and Office Building Association of Metropolitan Washington
on
B25-0074, "Fairness in Renting Clarification Amendment Act of 2023" and
B25-0113, "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"
Council of the District of Columbia
The Committee on Housing
May 18, 2023

Good morning, Chairman White and members of the Housing Committee. My name is Katalin Peter. I am the Vice President of Government Affairs for the Apartment and Office Building Association of Metropolitan Washington, DC (AOBA), representing members managing 107,000 multi-family properties. Our member companies not only maintain and operate critical housing stock, but they are also committed to creating comfortable communities.

AOBA housing managers and owners are committed to best practices in 6 major areas: building operations and management; life safety; security and risk management; training and education; sustainability; and tenant relations. This statement shares our initial comments and questions on the following bills before the Committee: B25-0074, "*Fairness in Renting Clarification Amendment Act of 2023*" and B25-0113, "*Community Land Trusts' Access and Homeowner Support Amendment Act of 2023*."

Foremost, AOBA members believe it is necessary for the Committee to convene two small groups of stakeholders to discuss the technical details of both bills before moving towards a markup. B25-0074 is focused on making changes to legislation that passed at the end of last year, namely B24-0096, "*Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022*." Bill 24-0096 was based on multiple versions of temporary and emergency legislation by the same or similar names. The amount of confusion the overlapping nature of these substantively different, but similarly named, pieces of legislation cause AOBA members and their residents is massive. Attorneys for both housing providers and tenants continue to grasp at straws for correct interpretations. We believe it is critical for the affected stakeholders who must administer the law, i.e., housing providers and tenant attorneys, to be in the same room to go through their respective understanding and interpretations of the legislation.

As far as B25-0113 is concerned, AOBA believes every point outlined by the Land Title Association has merit, as this legislation is not just a matter of policy, but strict adherence to the technicalities of land and title law. In terms of policy, we believe there are other stakeholders whose further input is needed, namely those who are currently building and developing and utilizing TOPA. It is also our understanding that CNHED is currently conducting a study on TOPA and its effectiveness. We believe it would be valuable to have this information prior to any forward movement.

In light of the above, we have additional comments and questions on both bills, outlined below in bulleted form. We look forward to continued conversations and thank you for taking the time to do the invaluable public service of working on housing-related legislation.

B25-0074, "Fairness in Renting Clarification Amendment Act of 2023"

- Have the drafters of the bill spoken to the third-party services providers who process applications on behalf of housing providers? Do these third parties typically separate an application fee from a processing fee? Is there a reasonable way to separate the two? Is there any practical rationale for having two fees?
- Are housing providers currently and legally able to charge a separate processing fee from an application fee? Is this legislation intended to combine those, separate them or prohibit a processing fee entirely? Would creating one slightly higher application fee that includes processing be a simpler solution for everyone?
- If the Council wants to move from 30 days to 60 days' notice for rent increases, why does the Council continue legislating changes to allowable rent increases with less than 30 notice to housing providers? Currently, there is pending emergency legislation to change allowable rent increases that barely gives housing providers 30 days' notice of the change. How could housing providers comply with the District's current 30-day notice, nonetheless an extended 60 days' notice with these types of pending changes?
- Overall, the District has an extensive history of changing landlord/tenant law via emergency and temporary basis. Currently, we can barely meet the 30-day window of notice to tenants on rent increases, because each one of the emergency actions has implications on the types of rent increases housing providers may need to take. It seems

in the current environment, the District government itself couldn't maintain the level of consistency and predictability needed to issue 60-day notices.

B25-0113, "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

- Does the Committee on Housing know for certain how many tenant organizations have currently successfully purchased their properties and turned them into condos or co-ops?
- How many Community Land Trusts currently exist with the ability to move forward on current transactions subject to current TOPA laws?
- Is there anything prohibiting a Community Land Trust from moving through the current TOPA process?
- Has the Committee spoken to developers who have been slowed down by the current TOPA process?
- Would it be better to split this legislation into two pieces, one focused on the Community Land Trusts and the other on the Homeowner Resource Center?

From: Trayawn Brown
To: Hoendorf, Shawn (Council)
Cc: Committee on Housing; White, Robert (Council)
Subject: Fwd: Inclusionary Zoning Program
Date: Friday, May 19, 2023 8:50:00 AM

---------- Forwarded message ---------
From: **Trayawn Brown** [redacted]
Date: Thu, May 18, 2023, 8:54 PM
Subject: Inclusionary Zoning Program
To: <rwhite@dccouncil.gov>

Dear Mr. White and the Housing Committee,

I hope this letter finds you in good health and high spirits. My name is Trayawn Brown, a proud native Washingtonian, and I have resided in this city for the past 43 years. I am writing to express my concerns regarding the Inclusionary Zoning Program, of which I have been a recipient since 2017. I believe it is crucial to bring to your attention several issues that I find troubling about this affordable living program.

To begin with, I must assert that, in my opinion, there is a glaring discrepancy between the program's name and its actual affordability. As a single mother, I find it extremely challenging to progress towards homeownership due to the financial barriers imposed by this program. Every year, the rents increase, and the maximum income limit is set too low, making it nearly impossible to cover expenses such as rent, water, electricity, parking, and even provide a home-cooked meal for my child. Unfortunately, despite recently completing my recertification, my rent has surpassed the $2,000.00 mark, which is far from affordable. It seems that the affordable living programs are, in fact, a set-up for failure, as the maximum income requirements are unrealistically low. As soon as an individual exceeds that threshold by a mere dollar or two, they are suddenly forced to pay market rent, ranging from $3,000 to $4,000. Consequently, many average individuals find themselves at risk of becoming homeless. The current state of affordable living in DC feels like a mouse trap, where one must be near poverty to maintain their place of residence, leaving little room for personal growth and advancement.

Moreover, I would like to address the excessive and burdensome application requirements for the Inclusionary Zoning Program. The list of required documents is extensive, including a Declaration of Eligibility Form, a current driver's license for identification purposes, employer verification, two years of tax returns, two full months' worth of paystubs, bank statements from various mobile cash apps (Venmo, PayPal, CashApp/Apple Cash/etc), covering the past six months, statements from retirement and investment accounts (401ks, IRAs, Robinhood, Acorns, and similar accounts), and proof of any other sources of income such as unemployment benefits, self-employment income, child support, TANF, social security or disability payments, pension or other retirement payments (current proof of distributions)
, as well as documentation for any gifts or additional income received (proof of who gave it to you, what it is for, and how often you get it). Furthermore, the application necessitates providing birth certificates for both parents and children, court orders demonstrating at least 50% physical custody of a minor, and even school transcripts or proof of enrollment.

However, what struck me as particularly frustrating was the recent demand to meticulously explain, line by line, every bank deposit exceeding $100.00 for the past 6 months on an Excel spreadsheet provided by the Housing Trainer. I inquired about this additional requirement, as it was not listed on the Initial Application Required Document sheet sent to commence the recertification process. The Housing Trainer stated that it had always been a requirement, although it had not been strictly enforced in the past. This sudden change and the feeling of being singled out for scrutiny left me disheartened. Why must I, as an individual seeking affordable housing, be subjected to such extensive financial scrutiny and provide documentation that was not clearly specified at the outset? It is disconcerting to surrender my entire financial future merely to secure a roof over my head in the city I've called home my entire life.

I yearn for an opportunity to grow and elevate my circumstances, but how can I do so when my rent increases every year? In my efforts to make ends meet, I have even taken on a second job. However, when the time comes for recertification, I feel compelled to quit my job in order to keep my income below a certain threshold, simply to avoid the risk of homelessness for myself and my child.

Furthermore, I urge you to consider the long-term consequences of maintaining an affordable housing program that limits the upward mobility of its participants. By creating an environment where individuals are constantly on edge, fearing the loss of their homes and livelihoods due to slight increases in income, we are perpetuating a cycle of poverty and dependency. The goal should be to provide a stepping stone towards self-sufficiency, enabling individuals to gradually increase their income, build wealth, and ultimately transition out of affordable housing programs. This approach would not only benefit the individuals themselves but also alleviate the strain on the program, allowing it to serve a wider range of individuals in need.

In conclusion, Mr. White and members of the Housing Committee, I implore you to take immediate action to address the shortcomings of the Inclusionary Zoning Program and the overall affordable housing system in Washington, D.C. We need a comprehensive review and revision of the income limits, application requirements, and evaluation processes. It is essential to create an environment that fosters financial growth, stability, and independence for individuals and families seeking affordable housing. By doing so, we can build a more inclusive and equitable city, where everyone has a fair chance to thrive and contribute to the vibrant community we call home. Thank you for your attention to this urgent matter.

Respectfully,

Trayawn Brown

Reply Forward

—

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Testimony of Mel Zahnd
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia

Before the Committee on Housing
Council of the District of Columbia

"Public Hearing Regarding Bill 25-74 Fairness in Renting Clarification Amendment Act of 2023"

May 18, 2023

Legal Aid of the District of Columbia[1] submits the following testimony regarding the Fairness in Renting Clarification Amendment Act of 2023. While we believe that the Act overall represents a significant improvement in the law, Legal Aid urges an amendment to the provision of this bill regarding fees to process applications for rental housing. We support the provisions of the legislation regarding notices of rent increases and fees associated with maintaining the implied warranty of habitability.

Processing Fees

Legal Aid applauds the Council's recognition that tenants need predictability in the types and costs of fees for rental housing applications and that exorbitant fees are a barrier to securing housing.[2] Many of Legal Aid's clients are trapped in housing that is unsafe or unaffordable because they cannot cover

[1] Legal Aid of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real—in individual and systemic ways—for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From experiences of our client, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

[2] "Statement of Introduction for the Fairness in Renting Clarification Amend. Act of 2023," Bill 25-74 (Jan. 27, 2023); *See also* Eric Dunn, The Case Against Rental Application Fees, Georgetown J. on Poverty Law and Policy, Fall 2022, at 21-47.

the cost of applying for other options. Our clients often submit multiple applications before being approved for a suitable housing option, assuming they are approved at all; some will spend hundreds of dollars on unsuccessful applications and ultimately run out of funds to cover application fees before securing new housing. This is especially true for those who have withheld rent due to housing conditions and may be facing a pending eviction matter, which makes it all the more difficult to secure new housing.

To maximize the effect of this law and avoid unintended consequences, Legal Aid recommends that, rather than create a new category of "processing fee," this bill could more clearly accomplish the same purpose by defining the broad category of "application fee" and by including processing fees within this category.

This new bill may have the unintended effect of doubling application fees, rather than reducing them. Current law already caps application fees at $50 but does not define exactly what an application fee is.[3] Rather than filling the gap by defining application fees, this bill instead adds a new term, processing fees.[4] It then goes on to state that neither application fees nor processing fees should exceed $50.[5]

This could be misinterpreted to create a new category of potential fees, each of which could individually be up to $50. As written, the bill could frustrate its own purpose, by facing potential renters with double the fees they currently have to pay.

To address the current lack of definition for "application fees" under the law, we recommend that Council add a definition of "application fees." The definition should clarify that any "processing fees" fall under the umbrella of "application fees." This will provide landlords and prospective tenants with a common and predictable understanding of what fees are and are not allowed.
Legal Aid suggests the following amendment to this bill:

> Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:
>
> (a) Section 103 (D.C. Official Code § 42-3501.03) is amended by adding a new paragraph ~~(24A)~~ (2A) to read as follows:
>
> ~~"(24A) "Processing fee" means any fee associated with processing or reviewing an application for rental housing.~~

[3] *See* D.C. Code § 42-3501.01; § 42-3505.10(b)(1).

[4] Bill 25-74 § 2.

[5] *Id.*

"(2A) "Application fee" means any fee associated with processing or reviewing an application for rental housing.

~~(b) Section 510 (D.C. Official Code § 42-3505.10) is amended as follows:~~

~~(1) Subsection (a)(9) is amended by striking the phrase "; and" and inserting the phrase "and processing fee; and" in its place.~~
~~(2) Subsection (b) is amended to read as follows:~~

~~"(b)(1) A housing provider may require a prospective tenant to pay an application fee or a processing fee.~~

~~"(2) An application fee may not be more than $50; provided that beginning on January 1, 2024, the application fee may be adjusted annually by the housing provider, or his or her agent, commensurate with an increase in the Consumer Price Index for All Urban Consumers published by the Unite States Bureau of Labor Statistics.~~

~~"(3) A processing fee may not be more than $50; provided that beginning on January 1, 2024, the application fee may be adjusted annually by the housing provider, or his or her agent, commensurate with an increase in the Consumer Price Index for All Urban Consumers published by the United States Bureau of Labor Statistics..".~~

Notices of Rent Increases

Legal Aid supports the rest of the "Fairness in Renting Clarification Amendment Act of 2023" as drafted. The provision of this bill that extends the notice period for rent increases from 30 days to 60 days is a welcome improvement on the current law. Many low- and middle-income District tenants are paying rents that are at the edge of what their families can afford, and a rent increase can render their tenancies unsustainable. A 60-day notice period will give tenants more time to plan for an impending rent increase, whether that means reworking their finances or locating new housing and making arrangements to move.

Many of the tenants Legal Aid represents could have avoided accruing rental arrears as well as the ordeal and the destabilizing effects of an eviction case – as well as the correlating hit to their credit - if they had more time to prepare for a rent increase. Extending the notice period for rent increases will

make rent a more predictable and stable experience for low-income tenants, although it will not solve the underlying problem of the lack of affordable housing in the District.

Fees Associated with Maintaining the Implied Warranty of Habitability

Finally, we support the provision of this bill that prohibits fees to tenants and prospective tenants based on the maintenance of the implied warranty of habitability. This provision clarifies the pre-existing state of the law. The law already places the obligation of keeping an apartment in compliance with the implied warranty of habitability on landlords.[6] This provision makes clear that landlords cannot shift this burden onto tenants through fees at the beginning or at the end of the tenancy. Landlords are legally obligated to maintain rental housing in good repair, and this provision will help ensure that they do so in a way that does not further prejudice the tenant.

Conclusion

Legal Aid urges Council to amend the Fairness in Renting Clarification Amendment Act of 2023 to define "application fees," rather than creating a new category of "processing fees," which could have the unintended consequence of doubling fees for prospective renters. Legal Aid otherwise supports the provisions in this bill as drafted.

[6] *See, e.g.*, 14 D.C.M.R. § 301.1; *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1072 (D.C. Cir. 1970).

Testimony in Support of the BABY Act (B25-0045)
05.18.2023 Committee on Housing Public Hearing

Dear Chairman White and members of the Committee,

I am writing today on behalf of SPACEs In Action and in support of B25-0045.

As you know, the District is struggling to keep up with the demand for affordable, quality childcare. Unfortunately, and at the same time, the federal government is proposing cuts to childcare subsidies that will reduce the number of childcare slots available to poor and working class District residents who depend on childcare in order to work and take part in the District's economy.

As a city, we are not in a position to uphold barriers to the creation of early learning and care opportunities. This bill would not only enhance the availability of childcare, but it would also serve to protect the home care providers themselves – most of whom are Black and brown women in the District – from retributive action by unfriendly neighbors. By knowing that they are protected by law, educators will feel more comfortable creating new opportunities in home care across DC. Moreover, current providers who know about Paola's situation and similar stories will feel relief to know that the District is intervening in the favor of these oft-overlooked educators.

Many parents and providers have shared their experiences on-the-record and the message is clear: We need to protect early learning, and we need to protect our educators. We hope this Committee recognizes the role that it can play in creating and defending a prolific childcare sector in Washington, DC.

Thank you,
Aura Cruz Heredia
Grassroots Policy Organizer, SPACEs In Action
aura@spacesinaction.org

About SPACEs In Action
SPACEs In Action (SIA) is a grassroots, non-profit membership organization. SIA campaigns include increasing early childhood learning opportunities, access to health equity, climate justice and racial/economic dignity for Black, Latinx, and Immigrant families in Washington, DC and we're expanding to Maryland. Through base building, leadership development and taking collective action, we build power, expand coalitions and bridge alliances to win local, regional

and national people centered solutions. We, with our members, reclaim our power. We believe in coalition work and are members of ECIN P-5 Capacity Building Collaborative, Green New Deal Coalition, Fair Budget Coalition, Just Recovery DC, Shutdown DC, & Under 3 DC. SIA is a leading organization in the Under3DC Coalition and fully supports our coalition's platform and demands.

DC LEGISLATIVE ACTION COMMITTEE OF THE COMMUNITY ASSOCIATIONS INSTITUTE

TESTIMONY REGARDING BANNING ASSOCIATIONS FROM BANNING YOUTH AMENDMENT ACT OF 2023, B25-0045

Thank you for giving the DC Legislative Action Committee of the Community Associations Institute the opportunity to submit testimony on proposed legislation entitled, "Banning Associations from Banning Youth Amendment Act of 2023." (B25-0045)

By way of background, our organization represents the interest of the likely over 2,000 community associations in the District of Columbia, which include homeowners associations and condominium associations comprised of well over 100,000 District residents, and 4,000 volunteer leaders of those associations. While we applaud the Council's focus on increasing access to child care facilities in the District, and the proposed legislation's good intentions, we submit this testimony to point out some troubling components and unanticipated consequences of the proposed legislation. To that end, please see below:

1) Legislative impact: requires <u>all</u> new condominiums to allow such facilities – regardless of the size or configuration (even if, for example, it's a two to eight-unit condominium association, for example, of which there are *many* in the District) The legislation, moreover, would require all existing condominiums (again, regardless of their size or configuration) to allow such facilities when or if those condominiums amend their governing documents, for any reason.

2) The proposed legislation ignores impact of occupancy restrictions already in place in governing documents, such as Bylaws and Declarations, recorded in the land records, and upon which purchasers and owners of condominiums relied as a contract when they bought their homes. Further, water and other utilities, particularly in older buildings, are generally <u>not</u> separately metered. A child care facility would increase the use of water and other utilities, which the Association could not recoup without separate metering, which would generally be prohibitively expensive. As such, for example, a single person would be paying for much, much more water and/or other utilities than they use. Perhaps double or triple. Additionally, the useful life of common elements of the community will be diminished for the increase usage by any in-home businesses. Associations currently use eserve Studies to guide their reserve funding for capital replacement. These studies are based on generally accepted usage principles that do not contemplate an in-home business with high volume. The immediate impact of a child care facility on utilities (water, sewer, etc.) would be able to be tracked and tied back to the child care facility, however, the long term impact

on the common elements (parking garage, elevator(s), security equipment/access control equipment, etc.)

3) The proposed legislation imposes burden on condominium associations to address noise and other complaints associated with child care operations and noise. The Boards of Directors of these Associations are all volunteers, with significant burdens on these nonprofit organizations whose sole revenue is generally monthly assessments, to respond to complaints, hold hearings related to noise and other complaints, fine owners and engage in what will likely be a great deal of litigation related to claims of nuisance, against associations, against board members and against the child care facilities. In addition, it will have a chilling effect on the willingness of owners to serve on Board of Directors. Our constituency already struggles to find homeowners who are willing to serve on the Board of Directors for the communities in light of increased threats of litigation and peaceful enjoyment of their own homes.

4) Condominium associations amend their Bylaws from time to time for various reasons to improve the community, clarify confusing provisions drafted by the developer (the developer is the party that drafts Bylaws and Declarations) or to otherwise address concerns related to the governing documents as requested and voted on by the entire community (unit owners). If amending Bylaws, for example, triggers a mandate that child care facilities be permitted in a condominium association, it will have a chilling effect on amending documents based on the community's (unit owners') needs, desires and goals, or their need to simply clarify ambiguities in those documents.

5) As written, the proposed legislation would entitle a residential unit to be converted to only a child care business/facility, and no longer be occupied by a person(s) or family, which does not appear to be an intended goal of this legislation.

6) Although the proposed legislation requires the child care provider to obtain insurance coverage, it does not address the fact that insurance claims and lawsuits will be filed against the condominium association's master insurance policy, which in the District is generally the insurance policy of *first resort* for injuries and damage within a condominium unit and the common areas. Condominium associations routinely engage in risk mitigation strategies to reduce exposures to insurance claims and lawsuits, but that would not be something associations could do or engage in associated with child care facilities and allegations of injury, negligence, lack of supervision, failure to seek medical attention and abuse or abuse prevention.

Suggestions:

a. Restrict application of statute to condominium associations that have 40 or more units.
b. Not be applicable to existing or future condominium associations that do not have separately metered utilities.
c. Restrict to units that have separate entrance/exit points that will limit the impact on the common elements of the Association.
d. Only be applicable to existing associations that amend their Bylaws or Declarations (governing documents) associated with usage restrictions, not *any amendment for any reason*, including amendments that simply clarify unclear existing language in those governing documents.
e. There should be a delay in the effective date of an amendment of governing documents by an Association triggering the applicability of the child care law to that Association (because, among other reasons, the governing document amendment process takes months, and there are likely many Associations currently in the middle of that process at any given time).
f. Allow Associations to complain directly to the licensing entity about the impact of proposed child care facility, to avoid the significant volunteer Board Member time, expense, legal fees and other burdens of fining, hearings and litigation.
g. Child care facility would have to pay Association costs associated with sound-proofing, proving excess sound (which is nearly impossible to do, and is the subject of regular litigation before the DC Courts), utilities, key fob or after-hours access to the premises.
h. Clarify that the legislation is not intended to permit the conversion of a residential condominium unit to a use that is solely a business enterprise, namely, a child care facility.
i. Address the reality that, in light of #6, above, often significant and serious claims against child care facilities will have to be paid for, defended and otherwise handled by condominium associations and their master insurance carriers, causing many associations to become uninsurable, or for premiums to skyrocket.

Should you have any questions, please contact either Scott Burka [redacted] or Cary Devorsetz [redacted], who serve as Co-Chairs of the DC Legislative Action Committee of the Community Associations Institute.

Fadwa Berouel and Stan Veuger
Ward 1 Residents and Parents of Home Daycare Attendee
Testimony in Support of the BABY Act of 2023
B25-0045 “Banning Associations from Banning Youth”

We are writing in strong support of the Banning Associations from Banning Youth or BABY Act of 2023, both for reasons grounded in our personal experience as a family and on broader policy grounds.

Our son used to attend the Washington Family Child Development Home, a home daycare formerly owned and run by Maria Paola Miranda just a block from our home in Ward 1. Our experience with the intimate, familiar, loving care offered by Paola was an extraordinarily positive one—excepting one aspect, the campaign of harassment Paola and her daycare were subjected to by her condominium building’s homeowner association. This campaign culminated in litigation that led to the closure of the daycare on narrow technical grounds, destroying Paola’s business and leaving us frustrated scrambling for alternative solutions.

Setting aside our personal experience, there are clear and convincing public policy reasons to support the BABY Act as well. Finding reliable daycare options is a challenge for many parents in the District. Home daycares can add to daycare capacity without crowding out housing. They also offer a more personal and customizable approach to care than larger corporate daycares do. But especially in the densest parts of the city, like Ward 1, many potential locations are in apartment, condominium, or coop buildings—for the simple reasons that many residences are. Limiting the restrictions homeowner associations can impose on the presence of home daycares ensures that they can continue to operate precisely in those parts of the city where space is most valuable.

From:	Kayla Luut
To:	Frumin, Matthew (Council); Mendelson, Phil (COUNCIL); pmendolson@dccouncil.us; White, Robert (Council); anita.bonds@dccouncil.us; Nadeau, Brianne K. (Council); Cuddihy, Sean (Council); Hilgendorf, Shawn (Council); Cocilova, Caitlin (Council)
Subject:	My Written Testimony as to Proposed Bill Initiated by Matt Frumin, B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"
Date:	Thursday, June 1, 2023 7:08:07 PM
Attachments:	FAIRNESS IN RENTING EMERGENCY AMENDMENT ACT OF 2021.pdf

Good day to all at DC Council and Staff and Happy Belated Memorial Day, 2023.

I am writing this testimony as to:

- B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"

I am responding to this above-noted bill proposal, as outlined below:

As a current voucher holder here in the District of Columbia, I have been grossly discriminated against by current and prospective landlords, real estate agents.

Honestly it is shocking to me what I have been put through.

1) I have had prospective landlords, because of my status as a voucher holder, and not much credit (though nothing bad). I have had numerous landlords tell me that I must pay two month's security deposit due to my lack of credit. In the **D.C. Act 24-186. Fairness in Renting Emergency Amendment Act of 2021**, Under **Sec 510. Tenant Screening, (B), (c),** it specifically states:

"A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider."

As to this noted above, I have been turned down by numerous landlords, and real estate agents, at the top level. I even sent them a copy of the **D.C. Act 24-186. Fairness in Renting Emergency Amendment Act of 2021, and they have stated this is legal, as Congress has to approve any DC Council bill. Though what they did not know was that Congress has 30 days to cancel or decline any DC Council Proposed Bill. If Congress does not respond within 30 days, then THE BILL PASSES. I sent that link to a very senior real estate agent at Long & Foster, and I am sure she double-checked this with their legal staff.**

This also includes landlords attempting to raise my rent due to having a voucher that is mostly covered by the government. There was even a site from a prospective landlord that specifically stated that he is **exempt** from renting to voucher recipients!

Furthermore, there is also the issue of being overcharged not only for the application fee in which I was charged more than $50.00, there is now **"an amenity fee"** that landlords are adding in addition to the security deposit. This amenity fee is several hundred dollars, on top of any security deposit. This is not appropriate to me, as we are already paying a full security deposit. I do not believe this to be fair in any way. An agent at Long & Foster, charged me $55.00 each time I filed an application via Long & Foster, wherein they should have saved this application to provide to various landlords they work with, and just this one application can be

sent out. I was charged over $300.00 for each application. I brought this up to them, and they gave me some type of lame excuse.

My current landlord, Bozzuto, via the former general manager, Brian Roche, increased my rent almost a thousand dollars, though he did not follow the law as to the DC Housing Authority (DCHA) HAP contract, which specifically states that, before the landlord can increase any rent, they must first get the approval of the DC Housing Authority, at least 90 days in advance. Mr. Roche, on the first of the following month, attempted to charge me $3,287.00 per month (almost a thousand dollars more than current rent). I had my case manager at DCHA follow up via email, with Mr. Roche copied on, that DCHA is not allowing any rent increases at present (and this was back in March, 2022). My case manager further provided a written statement as to this as well. Mr. Roche sent her a very nasty email message back. Mr. Roche was forced to continue to accept my current rent, though several employees of Bozzuto have been outright discriminating and retaliating against me since, including filing false claims with DCHA, with the hope of having my voucher revoked.

Additionally, I have not been sent the appropriate notification, i.e.:

Sec 510. Tenant Screening:

"(a) Before requesting any information from a prospective tenant as part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants."

AND

"(a)(1): The types of information that will be accessed to conduct a tenant screening."

AND

Sec 510. Tenant Screening"

"(3) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action."

Also, under **Sec 510. Tenant Screening:**

In addition to **"(c)," I also add:**

"(d) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

(1) The specific grounds for the adverse action;

(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of

any information upon which the housing provider relied in making his or her determination."

COPY ATTACHED OF D.C. Act 24-186. Fairness in Renting Emergency Amendment Act of 2021 below.

I could cite numerous other violations as well.

The downside as to all of this is that any official complaint filed with real estate commission in DC, and/or involve an attorney in negotiations as to a proposed settlement, or initiating legal proceedings takes a very lengthy amount of time, which really adversely impacts lower income voucher recipients like me, and makes it much harder to secure housing, etc during this long process. We do not have the luxury of time, which is why numerous voucher recipients do not bother to do.

Truth is that numerous landlords, real estate agents, do not understand the rules of the DC Housing agency, let alone the HAP contract which landlords sign. They break the law all of the time as to this, and they take advantage of the fact that voucher recipients cannot afford private attorney representation, and furthermore, take full advantage in further discrimination and retaliation against the voucher recipient.

In fact I am going through this now with my current landlord, after I filed a complaint with the Office of Tenant Advocate, and the ongoing retaliation and unique discrimination is still going on to this very day.

It is, in fact, a literal nightmare as to what I have been subjected to.

I wish that laws are more strictly enforced in the District of Columbia, as to landlords, real estate agents, and in a much more expeditious manner. This also includes wealthy organizations with super lawyers, for a very high fee, who are really unethical, and not held accountable either. They can pay the money unlike a voucher recipient (and thus the voucher recipient is taken brutal advantage of). Even the pro bono firms are at capacity as to not taking on any more clients.

Thank you for taking the time to listen to my thoughts on this matter to all at DC Council.

Respectfully,

Karen Lundregan

Council of the
DISTRICT OF COLUMBIA

D.C. Act 24-186. Fairness in Renting Emergency Amendment Act of 2021.

AN ACT

To amend, on an emergency basis, the Rental Housing Act of 1985 to require a housing provider to serve a written notice to vacate on a tenant before evicting the tenant for any reason, to require a housing provider to provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim, to require the Superior Court to dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider, in cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, to provide that no tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing, to require the Superior Court to seal certain eviction records, to authorize the Superior Court to seal certain evictions records upon motion by a tenant, to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action; and to amend section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fairness in Renting Emergency Amendment Act of 2021".

Sec. 2. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq.*), is amended as follows:

Note § 42-3505.01

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "any reason other than nonpayment of rent" and inserting the phrase "any reason" in its place.

(2) A new subsection (a-1) is added to read as follows:

"**(a-1)(1)** A housing provider shall provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim, unless the claim pertains to subsection (b-1) of this section. Such notice may be served concurrently with notice provided under subsection (a) of this section.

"**(2)** The Superior Court shall dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider:

"**(A)** Did not provide the tenant with notice as required by this subsection;

"**(B)** Filed the claim to recover possession of the rental less than 30 days after providing the tenant with notice as required by this subsection; or

"**(C)** In cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service with a readable timestamp that indicates the date and time of when the summons was posted.".

(3) A new subsection (r) is added to read as follows:

"**(r)** No tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1); except, that a housing provider that obtains the required license shall not be precluded by this subsection from proceeding with an eviction."

Note § 42-3505.09, § 42-3505.10

(b) New sections 509 and 510 are added to read as follows:

"**Sec. 509.** Sealing of eviction court records.

"**(a)** The Superior Court shall seal all court records relating to an eviction proceeding:

"**(1)** If the eviction proceeding does not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding; or

"**(2)** If the eviction proceeding results in a judgement for possession in favor of the housing provider, 3 years after the final resolution of the eviction proceeding; except, that, if the tenant was the defendant in any additional eviction proceedings that resulted in judgment for possession in favor of the housing provider during the 3-year period after the final resolution of the first eviction proceeding, the court shall seal the court records of all such proceedings at the completion of a 3-year period in which the tenant is not a defendant in another eviction proceeding that resulted in judgment for possession in favor of the housing provider.

"**(b)** For court records relating to an eviction proceeding filed before March 11, 2020, the requirements of subsection (a) of this section shall apply as of January 1, 2021.

"**(c)(1)** The Superior Court may seal court records relating to an eviction proceeding at any time, upon motion by a tenant, if:

"**(A)** The tenant demonstrates by a preponderance of the evidence that:

"**(i)** The housing provider brought the eviction proceeding because the tenant failed to pay an amount of $600 or less;

"**(ii)** The tenant was evicted from a unit under a federal or District site-based housing assistance program or a federal or District tenant-based housing assistance program;

"**(iii)** The housing provider's initiation of eviction proceedings against the tenant was in violation of:

"**(I)** Section 502; or

"**(II)** Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61);

"**(iv)** The housing provider failed to timely abate a violation of 14 DCMR § 100 *et seq.* or 12G DCMR 100 *et seq.* in relation to the defendant tenant's rental unit;

"**(v)** The housing provider initiated the eviction proceedings because of an incident that would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"**(vi)** The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the rental unit; or

"**(B)** The Superior Court determines that there are other grounds justifying such relief.

"**(2)** An order dismissing, granting, or denying a motion filed under this subsection shall be a final order for purposes of appeal.

"**(3)(A)** A copy of an order issued under this subsection shall be provided to the tenant or his or her counsel.

"**(B)** A tenant may obtain a copy of an order issued under this subsection at any time from the Clerk of the Superior Court, upon proper identification, without a showing of need.

"**(d)** Records sealed under this section shall be opened only:

"**(1)** Upon written request of the tenant; or

"**(2)** On order of the Superior Court upon a showing of compelling need.

"**(e)** The court may release records sealed under this section for scholarly, educational, journalistic, or governmental purposes, upon a balancing of the interests of the tenant for nondisclosure against the interests of the requesting party; provided, that the name, address, and any other personal identifying information of the tenant shall be redacted from any records released under this subsection.

"**(f)** The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.

"**(g)(1)** Where a housing provider intentionally bases an adverse action taken against a prospective tenant on an eviction court record that the housing provider knows to be sealed pursuant to this section, the prospective tenant may bring a civil action in the Superior Court of the District of Columbia within one year after the alleged violation and, upon prevailing, shall be entitled to the following relief:

"**(A)** Reasonable attorneys' fees and costs;

"**(B)** Incidental damages; and

"**(C)** Equitable relief as may be appropriate.

"**(2)** For the purposes of this section, the term "adverse action" means:

"**(A)** Denial of a prospective tenant's rental application; or

"**(B)** Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"**Sec. 510.** Tenant screening.

"**(a)** Before requesting any information from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"**(1)** The types of information that will be accessed to conduct a tenant screening;

"**(2)** The criteria that may result in denial of the application; and

"**(3)** If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action.

"**(b)** For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"**(1)** Whether a previous action to recover possession from the prospective tenant occurred if the action:

"**(A)** Did not result in a judgment for possession in favor of the housing provider; or

"**(B)** Was filed 3 or more years ago.

"**(2)** Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"**(A)** Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"**(B)** Took place 3 or more years ago.

"**(c)** A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"**(d)** If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"**(1)** The specific grounds for the adverse action;

"**(2)** A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"**(3)** A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"**(e)(1)** After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"**(A)** Inaccurate or incorrectly attributed to the prospective tenant; or

"**(B)** Based upon prohibited criteria under subsection (b) or subsection (c) of this section.

"**(2)** The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"**(3)** Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"**(f)** Any housing provider who knowingly violates any provision of this section, or any rule issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"**(g)** For the purposes of this section, the term:

"**(1)** "Adverse action" means:

"**(A)** Denial of a prospective tenant's rental application; or

"**(B)** Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"**(2)** "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant.".

Note § 16-1501

Sec. 3. Section 16-1501 of the District of Columbia Official Code is amended by adding a new subsection (c) to read as follows:

"**(c)** The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600; except, that the person aggrieved may file a complaint to recover the amount owed.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

LAW INFORMATION

Cites

D.C. Act 24-186 (PDF)

68 DCR 011333

Effective

Oct. 25, 2021

Legislative History (LIMS)

From: Matt Fallon
To: Committee on Housing
Subject: In Support of Home Daycares and The BABY Act (B25-0045)
Date: Thursday, June 1, 2023 9:03:24 AM

Members of the Housing Committee,

I would like to formally express my strong support for the Banning Associations from Banning Youth BABY Amendment Act of 2023 (B25-0045). Its passage would rightly limit the ability of Homeowner Associations (HOAs) from circumventing the spirit of existing Department of Buildings (DOB) and Office of the State Superintendent of Education (OSSE) regulations that attempt to preserve access to badly needed Child Development Homes (CDHs) in this city.

My family was personally impacted by the NIMBY overreach of HOAs who shut down my children's CDH last year. Its closure eliminated our access to childcare, disrupted my and my wife's work lives, and negatively impacted our children's early childhood education. I ask the Housing Committee and the broader Council to pass this Act to prevent our unfortunate situation from ever happening to a family in this city who relies on the safe and nurturing environment that CDHs provide.

Please join states like Colorado and California in protecting home daycares.

Thank you,
Matthew Fallon

--

Matthew Fallon
[redacted]

From: Matthew Siblo
To: Committee on Housing
Subject: Testimony for BABY ACT
Date: Wednesday, May 24, 2023 5:48:38 PM

Hello--

I'd like to provide my experience with Ms. Paola Miranda and her home daycare which was an absolute godsend to my family. We were one of the first families to start with Ms. Paola when she opened in 2016 and she instantly became--and remains--a part of our extended family. Both of my children spent many years with her and as a parent, she provided an invaluable sense of comfort and peace of mind. Her home was a clean, safe environment where I was able to drop my children off without a single sense of doubt that they would be deeply cared for. I believe it would be a genuine loss to our community if she were unable to continue to operate. I cannot recommend her capacity to provide quality care enough. It is my hope that you will keep our family's story in mind when considering your next steps.

Warmly,
-Matthew Siblo

--
Matthew Siblo, Ph.D.
Licensed Professional Counselor

"And yes, I recognize the irony. The system I oppose affords me the luxury of biting the hand that feeds. That's exactly why the privileged like me, should feel obliged to whine and kick and scream. Until everyone has everything they need."

Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Public Hearing on:

Bill 25-74, the "Fairness in Renting Clarification Amendment Act of 2023"
and
Bill 25-113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

Committee on Housing
The Honorable Robert C. White, Jr., Chairperson
Council of the District of Columbia

on

Thursday, May 18th, 2023
10:00 a.m.

Via Virtual Platform

Introduction

Good afternoon, Chairperson White, members of the Committee, and staff. I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate. Today I will testify on two measures pending before the Committee: Bill 25-74, the "Fairness in Renting Clarification Amendment Act of 2023," and Bill 25-113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023." First, I want to thank Councilmember Henderson for introducing these two bills, which I strongly support with some recommended changes. I also want to thank you, Chairperson White, for your continuing leadership in the housing arena.

Bill 25-74, the "Fairness in Renting Clarification Amendment Act of 2023"

What the bill does

Bill 25-74 has three major provisions: (1) it would define and cap at $50 a "processing fee" that the landlord may charge a rental housing applicant; this "processing fee" would be in addition to the $50 cap on any "application fee" enacted by the Council last year; (2) it would require 60 days' notice of any rent increase in the District, rather than the current minimum 30 days' notice; and (3) it would prohibit landlords from charging incoming or outgoing tenants fees to

cover the cost of maintaining the habitability of the unit. I will discuss each in turn.

The Processing Fee

First, I will discuss the proposed $50 cap on "processing fees." For context, Law 24-115, the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022," effective May 18, 2022, establishes a $50 cap on any "application fee" charged to a rental applicant in the District.[1] Despite this law, the OTA continues to see fee schedules for rental applicants that include so-called "administrative" and other fees – as high as $500 – that defy any cost justification and I believe defy current law. Attached to my testimony are two examples of this practice.

I strongly support the intent of Bill 25-74 to rein in these landlord practices which violate the spirit of Law 24-115. Because the OTA believes these practices also violate the letter of the law, however, I will offer a different solution to the problem – namely a definition for the term "application fee," which Law 24-115 currently lacks. I believe an appropriate definition should resolve any ambiguity

[1] D.C. Official Code § 42–3505.10(b). We note that under the current law, starting in 2024, this $50 cap is subject to an annual inflation adjustment. See D.C. Official Code § 42–3505.10(b)(2).

in the current law -- and should help to shut down these harmful landlord practices.

First, I will note a possible ambiguity in Bill 25-74 itself. At lines 48 to 49, the bill states that "the housing provider may require a prospective tenant to pay an application fee ***or*** a processing fee." I emphasize the word "or" because it could be interpreted to mean that the application fee and the processing fee are intended to be an "either / or" proposition; in other words, the landlord would be able to charge the applicant ***either*** an "application fee" or a "processing fee" but not both; if so, the existing cap on possible charges to the applicant would effectively remain at $50. Based on our discussions with Councilmember Henderson's staff, however, our understanding is that (1) the term "or" in this context is intended to mean "**and**/or" not "either/or"; and (2) this conclusion reflects the legislative effect as determined by the Council's General Counsel.

Consequently, despite the intention to rein in fees associated with tenant screening, we believe this provision would have the unfortunate impact of effectively doubling from $50 to $100 the existing cap on fees associated with rental applications under Law 24-115. As we have discussed with Councilmember Henderson's staff, we believe that the current $50 cap on "application fees" under Law 24-115 was intended to cover, and does cover, any "processing and

reviewing" costs – as well as any other costs associated with tenant screening incurred by the landlord. While the Committee Report itself does not specifically address this matter, we base our conclusion in part on the fact that the Committee's Print for Law 24-115 would have capped the application fee – and I quote – at "the greater of $35 ***or the actual cost of obtaining information for screening a prospective tenant.***" (*emphasis added*). Our understanding is that the Council ultimately opted for the $50 cap to cover the *range* of such costs, rather than what was understood to be the $35 *average* cost.[2]

We also believe the conclusion is necessary in order to make the best sense of the existing statutory language in Law 24-115. Otherwise, a landlord would be able to defeat the very purpose of the cap by charging *any* amount for any aspect of the application process that the cap purportedly does not cover. Indeed, it would nullify the Council Office of Racial Equity's (CORE's) "Racial Equity Assessment" – namely that the cap on the application fee has the potential "to improve housing outcomes for Black residents, Indigenous residents, and other residents of color" -- for whom unlimited application fees tend to pose more serious barriers to the rental housing market.

[2] See e.g., testimony of Melanie A. Acuña, Esq., *et al.*, AARP Legal Counsel for the Elderly, on Bill 23-149, the "Fair Tenant Screening Amendment Act of 2019," before the Committee on Government Operations; (October 27, 2020).

Moreover, in our estimation, $50 is more than enough to cover the entirety of landlord costs associated with a rental application. Such costs typically include paying a vendor to run background checks including regarding credit, rental history, and criminal history (which DC law tightly regulates[3]). In preparing this testimony, we found online tenant screening vendors operating nationally that charge landlords $35 per applicant for a full tenant screening report.[4]

We also note that the $50 application fee is on the higher end of the spectrum among jurisdictions that regulate such fees. For example, New York caps application fees at $20;[5] Wisconsin caps the fee for consumer credit screening at $25;[6] in the state of Washington, the fee cannot exceed the actual cost of screening;[7] and, on the other end of the spectrum, Virginia limits the fee to $50 plus actual costs.[8]

Recommendation

Rather than permitting a new and separate "processing fee" also capped at $50, the OTA recommends clarifying what we believe is the intention behind Law

[3] Law 21-0259, the "Fair Criminal Record Screening for Housing Act of 2016," effective April 7, 2017.
[4] E.g., https://rentredi.com/tenant-screening/.
[5] New York Consolidated Laws Chapter 50, Article 7, Section 238-a(1)(b).
[6] Wisconsin Statutes § 704.085(a)(1) (applies only to consumer credit screening).
[7] Revised Code of Washington 59.18.257(1)(b).
[8] Code of Virginia § 55.1-1203(C).

24-115 itself – to limit the permissible amount of the rental application fee to $50 *in toto*, inclusive of any and all amounts that must be paid by the rental applicant throughout the screening process. As a conversational starting point, we suggest applying the broad definition for "processing fee" as proposed in Bill 25-74 to a new definition for "application fee" along the following lines: "A fee covering any and all costs associated with tenant screening that the applicant is required to pay the landlord any time prior to signing a lease, including but not limited to any and all costs associated with information-gathering, processing, and reviewing an application for rental housing." We believe such a definition for the term "application fee" captures the key legislative intent behind Bill 25-74.

Further considerations regarding application fees

I ask the Committee to also consider further amending Bill 25-74 to limit two other mischievous fees that I believe are on-point with the measure's legislative intent:

1. The fee for replacing one tenant with another on the lease should be limited to $50 where the lease -- or the landlord notwithstanding any lease provision -- permits a tenant to be replaced. The OTA has seen fees of $1,000 – not disclosed in the lease – where a departing tenant finds a replacement tenant as agreed to by the landlord, subject to a fee as high as $1,000. Attached to my testimony is a relevant "Ask the Director" inquiry to the agency. This strikes us as sheer exploitation; we would ask that the

Committee consider applying the same $50 cap in this situation that applies to filling a vacant unit (i.e., the cost of screening the incoming tenant).

2. If only one background check is necessary when someone applies for multiple units within the same building or the same portfolio, that person should be charged only one application fee.

Like the mysterious $500 administrative fee merely to apply for a unit, these fees charged to tenants and/or applicants have no demonstrated basis in actual costs. Moreover, they cause real harm to more vulnerable residents who already confront serious challenges in seeking rental housing in the District.

Finally, I am deeply concerned about the growing phenomenon of move-in and move-out fees generally that (1) appear to have no cost justification, and (2) sometimes appear to be an end-run around the security deposit regulations. Indeed, instead of a reimbursable security deposit – which District law limits to one month's rent and requires an accounting for actual damages as well as actual costs incurred by the landlord[9] – more and more landlords are charging a non-refundable fee, which may exceed one month's rent. After all, why worry about fair play and cost justification when there's nothing in the law explicitly prohibiting the much easier route of semantical hair-splitting and "anything goes" fees?

[9] 14 D.C.M.R. 308-311.

60-day Rent Increase Notices

I will now discuss Bill 25-74's provision requiring a 60-day notice of rent increase. Currently, any rent increase in rental housing requires at least a 30-day notice from the landlord to the tenant, regardless of the unit's rent control status.[10] More specifically, a rent increase cannot take effect until the day of the month that the rent is normally paid at least 30 days after the tenant receives the rent increase notice.[11] Conversely, tenants whose tenancies are month-to-month may vacate the unit without penalty only if they provide a 30-day notice of intent to vacate.[12] Thus, a tenant who receives the *minimum* notice of a rent increase – say 30 or 31 days -- must make a snap decision whether to leave in order to avoid having to pay rent after moving out. This leaves the tenant with virtually no time to find alternative housing if they cannot pay or choose not to pay the rent increase.

That is why I strongly support Bill 25-74's provision requiring the housing provider to provide the tenant with a rent increase notice at least 60 days in advance of the rent increase taking effect. That would give any tenant in the month-to-month scenario at least 30 days to make the important life decision as

[10] D.C. Official Code § 42–3509.04(b).
[11] Id.
[12] D.C. Official Code § 42–3505.54(a).

to whether to find a new home, before having to provide the landlord with a Notice of Intent to Vacate.

The same principle should apply to tenants who are not month-to-month tenants but rather are tenants for a term certain – which usually occurs at the end of the initial 12-month lease term. Currently, under section 554(b) of the Act,[13] the landlord must provide these tenants with a Notice of a Rent Increase that is at least 15 days *more* than the Notice of Intent to Vacate that the lease requires the tenant to provide to the landlord.[14] As introduced, Bill 25-74's 60-day rule would not benefit these tenants, who would still have only 15 days instead of 30 days to consider their options in light of a rent increase notice.

Recommendation

Accordingly, we recommend also amending Section 554(b) to require that the landlord provide the tenant with a Notice of a Rent Increase ***30 days*** instead of 15 days before the tenant must provide the landlord with a Notice of Intent to Vacate. That way a tenant for a term certain will have the *same 30-day*

[13] D.C. Official Code § 42–3505.54(b).

[14] The section 554(b) "plus 15 days" rule for Notices of Rent Increase applies only to tenants whose leases require *more* than a 30-day Notice of Intent to Vacate. Thus, tenants for a term certain whose leases require only a 30-day Notice of Intent to Vacate are currently in the same position as month-to-month tenants and would also benefit from Bill 25-74's 60-day rule.

opportunity to decide whether to absorb the rent increase or pursue other housing options.

Relatedly, we recommend amending section 904(b) of the Act – and line 69 of the bill -- by adding the phrase "provided that the requirements of section 554(b) are met"[15] following the pending measure's "60 calendar days" language.[16] This will make it clear that the notice requirement for a rent increase in section 904(b) of the Act is the *minimum* notice period required by law, and not a "one-size-fits-all-scenarios" standard. It is important for the reader to understand that the rent increase notice requirement may be *longer* than 60 days, specifically where the landlord requires the tenant to provide more than a 30-day Notice of Intent to Vacate at the end of a lease term.

Rent Administrator notice requirement

On a related note, in the rent control context, I recommend requiring the housing provider to serve any rent increase notice upon the Rent Administrator concurrently with service upon the tenant. Currently, the landlord has 30 days

[15] Section 554(b) (D.C. Official Code § 42–3505.54(b)) reads: "A housing provider shall not place or cause to be placed in a residential lease or rental agreement a requirement that the tenant provide more than a 30-day notice to the housing provider of the tenant's intention to vacate the premises, unless the lease or agreement also requires the housing provider to provide the tenant with a written notice of any rent increase that is at least 15 days more than that time period."

[16] Amending section 904(b) (D.C. Official Code § 42-3509.04(b)), which reads in full: "No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant."

after serving the tenant with the Notice of Rent Increase to serve the Rent Administrator with a copy of the notice.[17] This is backwards – I believe that the Rent Administrator should be made aware of rent increases *before* they occur, not after.

Prohibiting fees to incoming or outgoing tenants for maintaining habitability

The OTA supports the bill's prohibition on charging tenants with fees upon move-in or move-out for maintaining the habitability of the unit. However, we have two amendatory recommendations.

Fees to cure inhabitability and Housing Code violations

The landlord should be prohibited not only from charging fees to maintain the *habitability* of the premises, but also from charging fees in order to achieve *Housing Code compliance* generally. This broader prohibition would ensure that landlords cannot charge the tenant a fee, for example, for fixing a broken dishwasher -- which constitutes a housing code violation but not uninhabitability -- as well as prohibiting fees to address more serious issues, such as the lack of running water, that do implicate inhabitability. Incidentally, the fee for fixing a broken dishwater is a variation on a theme that the OTA's intake team is very

[17] 14 D.C.M.R. 4205.4(d).

familiar with. Such charges should be prohibited in the context of ***any*** repair that is necessary to bring the unit into compliance with the Housing Code, and not only repairs necessary to maintain habitability. I will add that the bill's proviso that the landlord may continue to withhold the security deposit to recover the cost of fixing any damage caused by the tenant gets it exactly right.

To make this point perfectly clear, I would like to make an important distinction between the warranty of *habitability* that under District caselaw is implied into every residential lease,[18] and the explicit *regulatory* warranty that the owner of any residential property will maintain the premises in compliance with the District's Housing Code.[19] The regulatory warranty is the broader standard; it subsumes the common law warranty of habitability; and therefore it is the standard that we believe the legislation should incorporate.

Prohibiting fees for Housing Code compliance during the tenancy

Our second recommendation on this matter is that any such fee should be prohibited not only before move-in and after move-out *but also during the*

[18] *Javins v. First National Realty Corporation*, 428 F.2d 1071 (USCA DC Circuit, 1970)(while this Court held that the District's Housing Code is the *measure* of habitability, this does not mean that lesser Code violations necessarily constitute a breach of the warranty of habitability – they do not).

[19] 14 D.C.M.R. 301.1 ("… the owner will maintain the premises in compliance with this subtitle."). See also 14 D.C.M.R. 304.3 (prohibiting lease terms exempting the housing provider from liability for maintenance failures).

tenancy. To be sure, the housing regulations I just referred to already do so. Our concern, however, is that amending section 510 of the Act with reference only to the "before move-in or after move-out" time-frames (lines 58-59) could give rise to the incorrect inference that the rule is not in play during the tenancy. Section 510 ("tenant screening") may seem an inapposite placement for a rule of tenancy, but then so is the "after move-out" time-period. On balance, we believe it is best to foreclose the possibility of any misinference by having the section 510 prohibition comprehensively apply before, during, and after the tenancy.

Professional cleaning

Additionally, I am concerned about fees being charged where the tenant does not fulfill a lease requirement to have a unit *professionally* cleaned upon move-out. Such provisions unfairly raise the bar on the tenant's actual obligation upon vacating the unit to return it to the landlord in reasonably good condition, taking into account normal wear and tear. I would ask the Committee to consider reining in these fees as well.

Bill 25-113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

What the bill does

Bill 25-113 would do the following: (1) provide Community Land Trusts (CLTs) with a third right of refusal to buy rental property, after the tenants and the Mayor decide not to exercise their rights of refusal; (2) provide CLTs advance access to rental housing properties at tax sale; and (3) create a Homeowner Resource Center within DHCD to assist residents with various matters related to homeownership.

Recommendations

The OTA supports giving CLTs the third right of refusal to purchase rental housing. We believe CLTs are appropriate organizations to maintain affordability and rent predictability that would be lost if the accommodation were sold to a corporation and rented at market rates.

We have one recommendation by way of clarifying the legislation: where the bill refers to "section 208(h)" at line 119, we believe this is intended to refer to section 208(h) of the Rental Housing Act (rather than the Rental Housing Conversion and Sale Act, which the rest of the bill does and should amend).[20] This

[20] D.C. Official Code sec. 42-3505.01 *et seq*.

would have the effect of limiting rent increases for occupied units in CLT-acquired buildings to the standard annual rent increase allowed under the Rent Stabilization Program after the first year of ownership. We support applying rent stabilization to properties purchased by CLTs. If our inference is correct as to the legislative intent, we ask that the Committee clarify the 208(h) reference at line 119 to explicitly refer to the Rental Housing Act at D.C. Official Code 42-3502.08(h).[21]

Conclusion

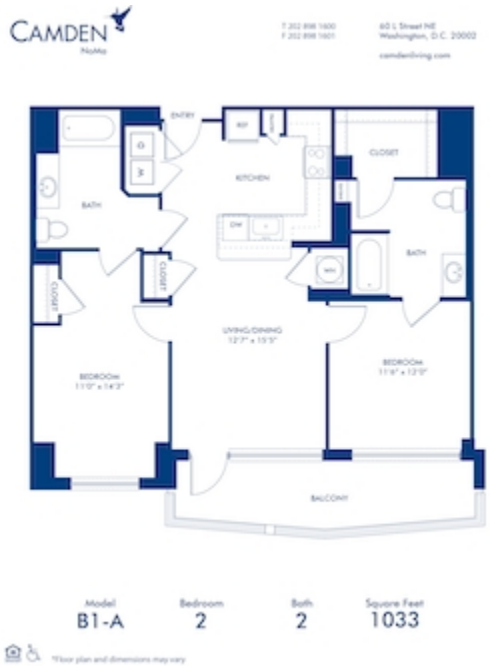
This concludes my testimony. Thank you again, Chairperson White, for this opportunity to testify. I welcome any questions you and other members may have.

[21] D.C. Official Code § 42-3502.08(h) sets forth the CPI plus 2% standard annual rent increase cap for non-elderly and non-disability tenants at subparagraph (2)(A), and the same for elderly and disability tenants at subparagraph (2)(B) by reference to section 224 of the Act.

61 Pierce St., Washington, DC, 20002
Phone: 202-898-1600
Quote ID: 430325663 | Valid through Aug 19, 2022
Created for Ahmad Abu-Khalaf on Aug 17, 2022

Camden NoMa - 1416 - $3,244/month

2 bed | 2 bath | 1033 sqft



Lease: Oct 14, 2022 - Feb 18, 2024 | **Applicants:** 2 | **Floorplan:** B1-A 2-2

Apply Now

Payments Schedule

Application	Move In	Monthly	Last Month
$600	$2,983.61	November - Jan 2024 $3,244	February $2,013.52

Quotes expire in 48 hours. Quotes do not reserve a specific apartment. Changes to the lease term, move in date, or home selected may result in the need for a new quote. Floor plans and dimensions may vary. Add-ons subject to availability.

61 Pierce St., Washington, DC, 20002
Phone: 202-898-1600
Quote ID: 430325663 | Valid through Aug 19, 2022
Created for Ahmad Abu-Khalaf on Aug 17, 2022

Camden NoMa - 1416 - $3,244/month

Payments Breakdown

Application

Administrative Fee (Per Home)	$500
Application Fee (Per lease signer) (2 x $50)	$100
Total	**$600**

Move In

Community Fee (Per Household) (2 x $300)	$600
Non-Refundable Pet Fee (Cat)	$500
October Base Rent: 18 days at $99/day	$1,782
October Monthly Pet Rent (per pet): 18 days at $1.94/day	$34.84
October Technology Package: 18 days at $3.71/day	$66.77
Total	**$2,983.61**

Monthly Rent

Base Rent	$3,069
Monthly Pet Rent (per pet)	$60
Technology Package	$115
Total	**$3,244**

Apply Now

Quotes expire in 48 hours. Quotes do not reserve a specific apartment. Changes to the lease term, move in date, or home selected may result in the need for a new quote. Floor plans and dimensions may vary. Add-ons subject to availability.

CAMDEN
South Capitol

[redacted], this is a receipt for your payment to Camden South Capitol

Dear [redacted],

Details for your payment to Camden South Capitol are shown below. This payment is related to your lease of unit # [redacted]

Should you have any questions, please call us at (202) 554-5200.

Sincerely,
Leasing Staff

Continue leasing

Receipt for payment to Camden South Capitol

Paid by [redacted]
1350 E St SE
Washington , DC 20003-5021

Charges	Application Fee - Online Application	$50.00
	Administrative Fee - Online Application	$500.00
	Total charges	**$550.00**
Payments	Account type: Credit card	$550.00
	Card name:Discover	
	Card number [redacted]	
	Invoice number: [redacted]	
	08/31/2022	
	Total payments	**$550.00**

Camden South Capitol
1345 S Capitol St SW Washington DC 20003
(202) 554-5200

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OTA Ask the Director submission 5/4/23 on “administrative fee” for replacing a tenant

My partner and I saved for a long time to afford a downpayment on our first home. Our lease in our current apartment, the [REDACTED], permits us to find another tenant to "takeover" the lease, and specifically says,

"REPLACEMENTS AND SUBLETTING. Replacing a Resident is allowed only when we consent in writing. If departing or remaining Residents find a replacement resident acceptable to us before moving out and we expressly consent, in writing, to the replacement, subletting, or assignment, then:
(a) A re-letting charge will not be due;
(b) A reasonable administrative (paperwork) fee will be due, and a re-keying fee will be due if re- keying is requested or required; and
(c) The departing and remaining Residents will remain liable for all Lease obligations for the rest of the original Lease Term.

The building is charging us $1,000 for the "reasonable" paperwork fee, which they at first called a "lease takeover fee" in our communications. I'm wondering if there is a guideline for what is and is not considered "reasonable" for charges like this. Any help would be appreciated, as a sudden charge of $1,000 that is not listed in our lease is something we did not expect.

OTA Comparison of Minimum Notice of Rent Increase vs. Minimum Notice of Tenant's Intent to Vacate

5/17/23

= Required notice period for rent increase
= Required notice period for tenant's intent to vacate
= Time tenant has to consider whether to pay the rent increase or move out

Current Law

Tenant on Month-to-Month Lease

-30 DAYS	-25 DAYS	-20 DAYS	-15 DAYS	-10 DAYS	-5 DAYS	RENT INCREASE EFFECTIVE --->

(No yellow bar=tenant has no time to consider whether to pay the rent increase or move out)

Tenant Facing Rent Increase *Upon* the End of the Lease Term (where the lease requires 60-day Notice of Intent to Vacate upon end of term)

-75 DAYS	-70 DAYS	-65 DAYS	-60 DAYS	-55 DAYS	-50 DAYS	-45 DAYS	-40 DAYS	-35 DAYS	-30 DAYS	-25 DAYS	-20 DAYS	-15 DAYS	-10 DAYS	-5 DAYS	RENT INCREASE EFFECTIVE --->

Bill 25-74, the "Fairness in Renting Clarification Amendment Act of 2023"

Tenant on a Month-to-Month Lease

-60 DAYS	-55 DAYS	-50 DAYS	-45 DAYS	-40 DAYS	-35 DAYS	-30 DAYS	-25 DAYS	-20 DAYS	-15 DAYS	-10 DAYS	-5 DAYS	RENT INCREASE EFFECTIVE --->

Tenant Facing Rent Increase *Upon* the End of the Lease Term (where the lease requires 60-day Notice of Intent to Vacate upon end of term)
(Same as current law)

OTA Proposal

Tenant on a Month-to-Month Lease
(Same as Bill 25-74)

Tenant Facing Rent Increase *Upon* the End of the Lease Term (where the lease requires 60-day Notice of Intent to Vacate upon end of term)

-90 DAYS	-85 DAYS	-80 DAYS	-75 DAYS	-70 DAYS	-65 DAYS	-60 DAYS	-55 DAYS	-50 DAYS	-45 DAYS	-40 DAYS	-35 DAYS	-30 DAYS	-25 DAYS	-20 DAYS	-15 DAYS	-10 DAYS	-5 DAYS	RENT INCREASE EFFECTIVE --->

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF BUILDINGS

Public Hearing
B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023"

Written Remarks of
Brian J. Hanlon
Acting Director
Department of Buildings

Before the Committee on Housing
Council of the District of Columbia
The Honorable Robert C. White, Jr., Chairman

Via Virtual Platform

May 18, 2023
10:00 A.M.

Good morning, Chairman White, Councilmembers, and staff. I am Brian Hanlon, Acting Director of the Department of Buildings (DOB). I am pleased to appear before you today to provide written remarks on DOB's position on B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023" ("BABY Amendment Act").

Introduction

Before diving into to the specifics of this legislation, which Chief Building Official Whitescarver will speak to in further detail momentarily, I want to take this opportunity to introduce myself to Councilmembers and staff, given that I have only been in this role for about a week and a half. It is an extraordinary honor to be selected by Mayor Bowser for this essential appointment, and I look forward to continuing to execute the strategic initiatives and customer service standards that I have inherited from my predecessor, Director Chrappah.

DOB provides vital services to residents across the city, and our portfolio covers everything from permitting, zoning, housing inspections, green buildings, and surveying, among many other disciplines. Our agency strives to continue providing peerless and timely customer service to ensure the safety of District homeowners and renters across the full spectrum of the agency's portfolio. I am humbled to be entrusted with this responsibility and welcome the opportunity to return to District Government service.

While I still have a lot to learn about DOB's mission and operations, including its strategic initiatives, staff, and customer service processes, I bring to this assignment a wealth of knowledge concerning the built environment and am enthusiastic to channel this experience into my new role. Throughout my career I have served as an architect and District Government manager with extensive responsibilities pertaining to the built environment. This includes several leadership roles focusing on construction management and building technologies.

I am confident that this management experience will enable me to continue delivering for District residents by fostering a culture of innovative thinking at DOB. This work will also include complex, but essential, new projects for the District, such as construction of additional green buildings across our city and finding novel solutions to revitalize our downtown. DOB will also do its part to execute strategic initiatives to fully realize Mayor Bowser's bold proposal to convert commercial real estate to residential property units in order to increase home ownerships, populate our city center, and drive economic growth, while providing new affordable housing for thousands of District residents in the coming years.

DOB Comments on the BABY Amendment Act

To provide some additional information on my background in the context of today's hearing, I should note that throughout my career as an architect and a public official in the District Government, I have had professional opportunities to work on and around virtually every kind of building imaginable, including skyscrapers, historic buildings, schools, and stadiums. As it relates to today's hearing, I also designed a day care facility some years ago.

In respect to the BABY Amendment Act, it is a pleasure to speak before this Committee today. Chairman White, I believe that we share many common beliefs on the need to provide safe building environments in our city, particularly facilities that are responsible for the care of children, and I look forward to working with you and your staff on this and many other important initiatives.

When I was preparing for this testimony I worked closely with my new team, and I must report that I was highly impressed by their knowledge and professionalism. Anything involving Construction Codes or other building standards is highly technical work, but upon coming into

this role, I quickly discovered DOB has a strong team under the Office of Construction and Building Standards in which I have every confidence.

In assessing the legislation before us today, we determined that this bill is well-intentioned, and that DOB would be very open to working with Council on refining this measure in order to provide affordable day care while also ensuring safety from fire and other hazards. Councilmember Nadeau's introductory memo to the bill outlined some sobering concerns about the shortages in this labor market and the challenges faced by working families in seeking safe and affordable childcare. We are also aware of the advantages of providing day care services in the child development home (CDH) environment.

In continuing this dialogue, however, we must remain cognizant that any changes made to the Condominium Act of 1976 pertaining to bylaws or other instruments must also fit within existing requirements under the Construction Code, Zoning, and Office of the State Superintendent of Education regulations. For example, under the Construction Code, the overarching concern is structural integrity and safety of buildings, and the standards in place were adopted by the District's Construction Code Coordinating Board (CCCB) which is charged with developing the Construction Code for the District of Columbia.

While DOB provides support staff to the CCCB, it is an independent entity and the standards they adopt go through a thorough, deliberative process with an overarching emphasis on public safety. They have specific standards on the books that govern the kind of architectural and functional conversions for day care facilities which, when taken into consideration regarding today's proposal, bring distinct challenges when working to ensure the safety of children from fire and other hazards.

That being said, DOB looks forward to working together with Council to explore potential solutions that ensure public safety while meeting this legislation's noble objective.

Conclusion

Chairman White and members of the committee, thank you for the opportunity to provide written remarks before you today. I look forward to answering any questions you may have, and to continuing this dialogue as the bill works its way through the legislative process to ensure the best possible outcomes for District families in the built environment. I now turn it over to Chief Building Official Whitescarver to present our agency's testimony on the BABY Amendment Act.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF BUILDINGS

Public Hearing
B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023"

Testimony of
Clarence Whitescarver
Chief Building Official
Department of Buildings

Before the Committee on Housing
Council of the District of Columbia
The Honorable Robert C. White, Jr., Chairman

Via Virtual Platform

May 18, 2023
10:00 A.M.

Good morning, Chairman White, Councilmembers, and staff. I am Clarence Whitescarver, Chief Building Official for the Department of Buildings (DOB). I am pleased to appear before you today to present DOB's position on B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023" ("BABY Amendment Act").

Introduction

The legislation seeks to expand the availability of Child Development Homes in the District of Columbia by prohibiting condominium instruments such as bylaws, rules, and regulations from excluding licensed childcare facilities from the premises.

The provision of additional safe and affordable childcare facilities in the District is a goal that DOB wholeheartedly supports. Our agency also understands and appreciates how establishing additional Child Development Homes could provide significant economic growth for our city, particularly in underserved neighborhoods. In addition, we are cognizant of the existing day care shortage across the District and the hardship this can cause, particularly for our working families.

Although DOB supports the intent of the bill, there are several other considerations that might prevent this legislation, in its current form, from accomplishing the intended goal of allowing multi-family condo buildings to be utilized as child day care facilities due to existing building safety standards.

DOB Comments on the BABY Amendment Act

To provide some context, child and adult day care facilities are regulated by many legal standards beyond condo bylaws, and these requirements are often much more public safety oriented than bylaws. Although bylaws are important and often well intentioned, they are not the only document that governs whether a building can be permitted to operate a day care center.

Any change in condo bylaws must fit within requirements established under the Construction Code, Zoning regulations, and Office of the State Superintendent for Education (OSSE) requirements under law that govern day care centers. Specifically, there are provisions contained within Title 11, Zoning Regulations; Title 12, Construction Codes; and OSSE licensing regulations that all must be complied with for day care facility operations. In my capacity as Chief Building Official, I will speak to the Title 12, Construction Code, issues as they relate to the use of a condo building for day care purposes. However, I also want to note that the Construction Code is thoroughly intertwined with zoning and OSSE requirements for day care facility safety, and that any significant changes would need to take into consideration all of these related standards.

As many are aware, Title 12 of the Construction Codes have as their primary focus the safe occupancy and use of a building or structure. Included in these codes are provisions for active and passive fire protection features, building size, and capacity limitations based on the use and construction materials, means of egress requirements, building and unit accessibility standards, and a myriad of other requirements to ensure the safety of the occupants. These regulations are of special concern when they involve the safety of young children placed in the supervised care of providers within the built environment, particularly with regards to potential fire hazards and related evacuation procedures.

Generally, child day care facilities are limited to detached one- or two-family dwellings or townhomes. These types of structures are classified as an R-3 building according to the Construction Code. District of Columbia Municipal Regulations (DCMR) Title 12B, Appendix M, and 12H DCMR, Appendix N, from the Residential Code and Fire Code, respectively, provide guidance on the use of R-3 buildings for the purpose of a day care facility, which is

considered a *custodial care* facility in the Construction Code parlance. *Detached* is a key element to understanding this type of one- or two-family dwelling. Attached single-family row homes, or townhomes, are included in the R-3 classification, but upon converting a single-family row home to multifamily use the building transitions from that of an R-3 to an R-2, multifamily dwelling, and the previously mentioned appendices no longer apply.

When a multi-family dwelling unit within an R-2 building wishes to engage in licensed childcare supervision, new, likely cost prohibitive, code requirements will be triggered for the condo building. The reason for this is that once an R-2 condo or apartment building houses children in a day care setting, the affected unit(s) transitions to an I-4 (Institutional use). The additional requirements for I-4 structures may include changes to or addition of a fire sprinkler system, passive fire-rated construction installation between the day care and other dwellings, changes in the fire-rating of interior wall and ceiling finishes, Certificate of Occupancy (CoO) changes, and consideration of egress pathways and means of egress. Practically speaking, typical condo buildings would be economically limited to only one unit of the building being used for day care purposes unless extraordinary renovations are completed to accommodate the additional use.

Accomplishing the building use goal of this legislation would also require significant changes to the Construction Code and other instruments outlined earlier in my testimony, assuming such revisions could be made without compromising the safety currently inherent to this type of multi-family building. Determining acceptable safety levels in multi-family, including high-rise, buildings with any degree of certainty would require significant professional building safety studies. For example, the impact on other evacuating occupants due to toddlers using an emergency means of egress stairway would be especially difficult to quantify for overall

building safety. DOB is capable of making these assessments, but it would require a lengthy deliberative process, which we are not sure is required given the current expanse of existing, and thoroughly vetted, safety requirements for day care facilities.

Conclusion

Chairman White and members of the Committee, thank you for the opportunity to testify today. I look forward to answering any questions you may have, and DOB stands ready and willing to work with you as this bill continues to work its way through the legislative process to ensure the best possible outcomes for District families in the built environment.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Public Hearing on

B25-0045, "BANNING ASSOCIATIONS FROM BANNING YOUTH AMENDMENT ACT OF 2023"

B25-0074, "FAIRNESS IN RENTING CLARIFICATION AMENDMENT ACT OF 2023"

B25-0113, "COMMUNITY LAND TRUSTS' ACCESS AND HOMEOWNER SUPPORT AMENDMENT ACT OF 2023"

Testimony of Colleen Green

Director, Department of Housing and Community Development

Committee on Housing

Council of the District of Columbia

The Honorable Robert C. White, Jr., Chairperson

Virtual Meeting Platform

Washington, DC 20004

May 18, 2023

10:00 AM

Good afternoon, Chairperson White and members and staff of the Committee on Housing. I am Colleen Green, the Director of the Department of Housing and Community Development ("DHCD"). I am happy to appear before the Committee today to offer testimony on behalf of the Executive on the three bills that are the subject of this public hearing: B25-0045, the "Banning Associations from Banning Youth Amendment Act of 2023"; B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"; and B25-0113, the "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023".

I will address the bills in order, but I would like to start by congratulating my colleague Brian Hanlon on his recent appointment to lead the Department of Buildings. I appreciate he and his staff being here today in partnership, to address the measures that impact issues that fall under the purview of DOB, most particularly B25-0045.

B25-0045, "Banning Associations From Banning Youth Amendment Act of 2023"

As introduced, B25-0045 would prohibit new and revised condominium instruments like bylaws, rules, and regulations from excluding licensed childcare facilities compliant with District regulations, from operating in condominium buildings. The bill also clarifies that units used for child development facilities are not exempt from applicable condominium rules governing parking, construction, architectural design, noise, landscaping, and other quality-of-life assurances. In addition, the bill allows condominium associations to regulate the insurance that child development homes are required to carry. Finally, the bill requires any insurance carried by childcare providers to be primary to any insurance the condominium association is required to carry.

The Executive supports the general intent of the measure and agrees with the testimony of

many of the witnesses today, regarding the importance of expanding and preserving access to safe and well-regulated daycare options, as defined by our sister agencies. I defer to my colleague Mr. Hanlon as many of the regulatory concerns fall under the purview of DOB, but I stand ready to assist the Committee as it continues to consider this bill.

B25-0074, "Fairness in Renting Clarification Amendment Act of 2023"

B25-0074 would amend the Rental Housing Act of 1985 to clarify that landlords may not charge certain extraordinary fees associated with processing applications for rental housing and raises the notice period for rent increases from 30 days to 60 days. The bill would also prohibit landlords from charging new or departing tenants with fees associated with maintaining the implied warranty of habitability in a unit. Landlords are required to keep units in good repair, and the costs associated with meeting that obligation should not be passed off to tenants. However, this provision retains the landlord's ability to withhold a security deposit for the replacement value of items a tenant may have damaged during their lease that go beyond the standard of ordinary wear and tear.

The Executive supports the aims of this legislation, and I am happy to work with the Committee and other interested parties to make sure the language of the bill reflects the desired intent to add tenant protections while balancing housing provider considerations, while also allowing for the smooth administration of the Rental Housing Act by DHCD's Rental Accommodations Division.

B25-0113, "Community Land Trusts' Access and Homeowner Support Amendment Act of 2023"

B25-0113 incorporates community land trusts registered with the Mayor into the Tenant

Opportunity to Purchase Act (TOPA) process, by granting registered community land trusts with the third right of refusal to purchase multifamily housing that is being offered for sale. In addition, the bill provides registered community land trusts with early access to purchase tax sale list properties before the properties become available to private buyers. Finally, the bill establishes a Homeowner Resource Center within the Department of Housing and Community Development to provide information to homeowners on matters such as types of ownership, financing, insurance, and taxes, purchasing residential property, property maintenance and improvement, health, safety, and environmental considerations, and access to relevant District laws and regulations. The Homeowner Resource Center will maintain a website which homeowners can visit to identify relevant resources and connect with staff. The Homeowner Resource Center will be led by a Housing Resource Officer, who must have demonstrated professional experience in property law.

DHCD would like to work with Committee as it further considers this legislation. It gives me some pause that adding what is essentially a third, "first right to purchase" under TOPA could have the effect of adding more time to the sales process, potentially leaving current renters in a state of limbo. Additionally, community land trusts currently can work with tenants or the District under TOPA and the District Opportunity to Purchase Act (DOPA) as currently legislated. I would like to fully explore with the Committee any unintended consequences that might arise for the District's tenants and housing providers and the health of the housing market due to the proposed changes. This is particularly true at such an economically uncertain moment in our history, changes like this this could further reduce investment. We should also discuss the costs and benefit of taking this approach as opposed to other means to better integrate Community Land Trusts in the TOPA-DOPA process, for example through the DOPA solicitation process. As DHCD prepares to release new DOPA regulations, it is an opportune time for such a discussion.

It is also important to note that DHCD already operates its Housing Resource Center (HRC), which is a public-facing one-stop resource on the retail level of DHCD headquarters at the corner of Good Hope Road and Martin Luther King Jr. Avenue, SE. Many of the informational offers required by the bill are already in place at the HRC and available for residents to access both in person and electronically at dhcd.dc.gov as well as at frontdoor.dc.gov.

Since I have taken this role, I have asked the staff to assess the customer experience at the HRC to make improvements. As we are finally coming out of Covid, the offerings at the HRC will be even more robust and relatable. These improvements to the quantity, quality and accessibility of the resources available will be detailed in a forthcoming community engagement plan. The HRC experience will be further improved when the agency is relocated into our new offices in 2024.

I would, therefore, welcome a fuller discussion of what the provisions in this bill could be expected to add to the existing HRC and this ongoing process of improvement and how we might better achieve these ends together.

This concludes my prepared remarks. Again, I welcome further dialogue on each of these pieces of legislation and I stand ready to help explore the best ways to make the intent of each bill work practically. Thank for the opportunity to testify today and I am available to answer any questions you may have.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF HUMAN RIGHTS

Public Hearing on

B25-0074, the "Fairness in Renting Clarification Amendment Act of 2023"

Testimony of
Hnin Khaing
Director

Before the

Committee on Housing
Council of the District of Columbia
The Honorable Robert White, Jr., Chairperson

May 30, 2023

Written Testimony for the Record

I, Hnin Khaing, Director of the D.C. Office of Human Rights (OHR), submit this written testimony for the record on Bill 25-0074, the "Fairness in Renting Clarification Amendment Act of 2023", which seeks to amend parts of the recently passed Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022 (B24-0096) ("ERSAFRA"). OHR is responsible for enforcing section 510 of the ERSAFRA.

For background context, the ERSAFRA, among other things, amended Title V of the Rental Housing Act of 1985, D.C. Code § 42-3505.10. This section prohibits certain tenant screening practices and requires housing providers to give relevant rental information to prospective tenants, such as notice of permissible screening practices that a housing provider employs, the rationale for any adverse actions taken against prospective tenants and related information, and notice of tenant rights. Currently, ERSAFRA requires OHR to process these complaints under the same mechanism as the Human Rights Act anti-discrimination cases. This means, OHR must first investigate the matter for probable cause and if there is probable cause, the case is set for a merits hearing before the Commission on Human Rights. OHR believes that this kind of protracted process is unnecessary and inefficient for a compliance provision like section 510 and therefore, recommends that the Council consider amending this part of the law.

OHR proposes a process similar to the process already enacted under Bill 24-0109, the "Cannabis Employment Protections Amendment Act of 2022". Like the current bill, this law is also a compliance statute, and essentially asks if the respondent engaged in the violation in question or not. The process under Bill 24-0109, the "Cannabis Employment Protections Amendment Act of 2022" requires: (1) Intake: review complaint for jurisdiction and whether it states a claim; (2) Mediation: within 45 days of docketing; (3) Request for information; (4) Fact-finding hearing: within 20 days after unsuccessful resolution attempt; (5) After hearing, hearing

examiner submits a proposed decision and order accompanied by findings of fact and conclusions of law to the Director; (6) Final determination and order; (7) Appeals.

OHR does not believe that compliance cases (like those under ERSAFRA) should have to go through the bifurcated process of a finding of probable cause and a certification to the Commission, as it will clog the system for adjudicating the current discrimination caseload and it will take longer than necessary to resolve the cases. OHR believes that this type of streamlined process would be welcomed by the parties. If requested, OHR will be glad to submit a redline of the proposed changes.

Thank you for this opportunity to submit testimony, and we look forward to any follow up questions you may have.